

2015 No. 23

INFRASTRUCTURE PLANNING

**The Northumberland County Council (A1 – South East
Northumberland Link Road (Morpeth Northern Bypass))
Development Consent Order 2015**

Made - - - - - *12th January 2015*

Coming into force - - - - - *2nd February 2015*

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an Order under sections 37, 114, 115, 117(4), 120 and 122 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single appointed person appointed by the Secretary of State under Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 19, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

Citation and commencement

1. This Order may be cited as the Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015 and comes into force on 2nd February 2015.

Interpretation

2.—(1) In this Order—

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

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

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

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

“the 1991 Act” means the New Roads and Street Works Act 1991(h);

“the 2008 Act” means the Planning Act 2008(i);

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1990 c. 8.

(h) 1991 c. 22.

(i) 2008 c. 29.

“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;

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

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act^(a);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the documents with references MNB Part 6.1.1 to MNB Part 6.3.18, certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document with reference MNB Part 5.2, certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

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

“the land plans” means the plans with reference numbers HE092631/0/A197/100/28C and 29B except in respect of Plot 13, and the plan with reference HE092631/0/A197/100/37 in respect of Plot 13 only, certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation);

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“NWL” means Northumbrian Water Limited (company number 2366703) whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“Order land” means the land shown on the land plans within the Order limits which is land to be acquired or used and is described in the book of reference;

“the Order limits” means the limits described as the DCO boundary on the works plan within which the authorised development may be carried out;

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

“relevant planning authority” means Northumberland County Council;

“requirements” means the requirements in Schedule 2 (requirements);

“the sections” means the sections shown on the plans with reference numbers HE092631/0/A197/09/08C, 09C, 10C, 11C, 12C, 13C, 14C, 15C, 16C, 17C, 18C, 19C, 32B, 33B, 34B, 35B, 36B, 37B, 38, 39, 40, 41 and 42, certified as the sections by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

(a) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 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.

“street plans” means the plans with reference numbers HE092631/0/A197/02/01A, 02B, 03A, 04A, 05A, 06A and 07A, certified as the street plans by the Secretary of State for the purposes of this Order;

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

“the undertaker” means the person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act and article 6 (benefit of Order);

“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 works plans” means the plans with reference numbers HE092631/0/A197/02/11A, 12B, 13B, 14B, 15B, 16B, 17B and 18B, certified as the works plans by the Secretary of State for the purposes of this Order.

(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 air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions, areas and lengths referred to in this Order and the book of reference are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

(4) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan cited.

(5) References in this Order to numbered works are references to the works as numbered in Schedule 1.

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order, including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 5 (limits of deviation) the works in Schedule 1 (authorised development) may only be constructed in the lines and situations shown on the works plans and in accordance with the levels shown on the sections.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Limits of Deviation

5. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to any extent not exceeding 1.0 metres in any direction within the Order limits; and
- (b) deviate vertically from the levels of the authorised development shown on the sections to any extent not exceeding 0.5 metres upwards or downwards.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order have effect solely for the benefit of the Northumberland County Council.

(2) Paragraph (1)—

- (a) is subject to paragraph (6) of article 23 (compulsory acquisition of rights); and
- (b) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefits of the provisions of this Order and such statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) The consent of the Secretary of State in paragraph (1) is not required when a transfer or grant is made to NWL for the purposes of undertaking, adopting and maintaining Work No. 3 nor when a transfer or grant is made to the Secretary of State.

(3) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee, as the case may be.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(b) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c);
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 and section 65(8) of that Act, do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(a) 1990 c. 43. There are amendments to subsection 82(1) which are not relevant to this Order.
 (b) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.
 (c) 1974 c. 40. Section 61 and 65 were amended by section 162 of, and paragraph 15(1), (3) and (4) of Schedule 15 to, the Environmental Act 1990 (c. 43); there are other amendments to sections 61 and 65 but none are relevant to this Order..

Street works

9.—(1) In relation to the streets specified in columns (1) and (2) of Schedule 3 (streets subject to street works), the undertaker may, for the purposes of the work described in column (4) of that Schedule, enter on to so much of the street specified in column (3) of that Schedule and—

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

(2) Where the undertaker is not the street authority the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private accesses specified in columns (1) and (2) of Parts 1 to 3 of Schedule 4 (streets and private accesses to be stopped up) to the extent specified, by reference to the letters and numbers shown on the street plans, in column (3) of those Parts of that Schedule.

(2) No street or private access specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (being a street or private access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private access to be substituted for it, which is specified in column (4) of those Parts of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority (in the case of a new street) or the landowners (in the case of a new private access) and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority (in the case of a new street) or the landowners (in the case of a new private access), until the completion and opening of the new street or private access in accordance with sub-paragraph (a).

(3) No private access specified in columns (1) and (2) of Part 3 of Schedule 4 (being a private access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land served by the private access to be stopped up.

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

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

(5) Where a street or private access has been stopped up under this article—

- (a) all rights of way over or along the street or private access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or 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.

(7) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Public rights of way

11.—(1) Subject to paragraphs (2) and (3) the undertaker may in connection with the carrying out of the authorised development stop up the sections of the public rights of way described in Part 1 of Schedule 5 (variation of public rights of way) and with effect from the date on which each of those public rights of way is physically stopped up by the undertaker in connection with the carrying out of the authorised development the public rights of way over that section are extinguished.

(2) Before the undertaker stops up the public right of way described in paragraph 3 of Part 1 (sections of public path stopped up) of Schedule 5 it must construct the replacement sections of footpath described in paragraphs 2 and 3 of Part 2 (sections of public path created) of Schedule 5 and, with effect from the date of the opening of the replacement sections of footpath to the public, public rights of way over the replacement section of footpath so constructed are created.

(3) If the undertaker stops up the public rights of way described in paragraphs 1 and 2 of Part 1 of Schedule 5, it must construct the replacement section of footpath described in paragraph 1 of Part 2 of Schedule 5, to be open to the public no later than the proposed link from St. Leonard's Lane to the A1 is open to the public, and, with effect from the date of the opening of the replacement section of footpath to the public, public rights of way over the replacement section of footpath so constructed are created.

Temporary prohibition or restriction of use of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter or divert, or prohibit or restrict the use of, any street 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 limitation on the scope of paragraph (1) the undertaker may use any street within the Order limits as a temporary working site where the use of that street has been prohibited or restricted under the powers conferred by this article.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration or diversion, or prohibition or restriction of the use of, a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily alter or divert, or prohibit or restrict the use of, the streets specified in columns (1) and (2) of Schedule 6 (temporary prohibition or restriction of use of streets) to the extent specified in column (3) of that Schedule.

(5) Where the undertaker is not the street authority the undertaker must not temporarily alter or divert, or prohibit or restrict the use of—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

Power to alter layout etc. of streets

13.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the streets specified in column (2) of Part 1 or Part 2 of Schedule 7 (streets subject to alteration of layout) to the extent specified in column (3) in the manner specified in relation to that street in column (4).

(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and the layout of any street having a junction with such a street and without limitation on the scope of this paragraph the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of the kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered, or in which works have been carried out under this article, to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority but such consent must not be unreasonably withheld.

(5) If, within 28 days of receiving an application for consent under paragraph (4), a street authority fails to notify the undertaker of its decision that street authority is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for the street in which the works are being carried out.

Construction and maintenance of new or altered streets

14. The streets authorised to be constructed, altered or diverted under this Order are to be public highways and are to be maintained by and at the expense of the highway authority.

Classification of roads

15.—(1) From the date on which it is completed and open to through traffic the new single carriageway road from Whorral Bank roundabout westwards to St. Leonard's grade separated junction referred to in Work No. 1 of Schedule 1 (authorised development), is to be classified as the A197 and is to be—

- (a) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
- (b) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,

as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(2) From the date on which the undertaker notifies the Secretary of State that they are completed and open for through traffic the new St. Leonard's all movements grade separated junction together with linking slip roads to access and egress the A1 trunk road referred to in Work No. 1 of Schedule 1 are to be classified as trunk roads for the purposes of any enactment or instrument which refers to highways classified as trunk roads; and the Secretary of State is to be the highway authority as if such classification had been made under section 10(2) (general provision as to trunk roads) of the 1980 Act.

(3) The new single carriageway road from St. Leonard's grade separated junction westwards to St. Leonard's Lane between the points marked B on the street plans is to be the U6097, an unclassified road.

Access to works

- 16.** The undertaker may, for the purposes of the authorised development—
- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Parts 1 and 2 of Schedule 8 (access to works); and
 - (b) with the approval of the relevant planning authority after consultation with the highway authority (where the highway authority is not the undertaker), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

17.—(1) A street authority and the undertaker may enter into agreements (or other appropriate arrangements) with respect to—

- (a) the construction of any new street including any structure carrying the street;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street;
- (c) any stopping up, alteration or diversion of a street authorised by this Order;
- (d) the carrying out in the street of any of the works referred to in article 9(1) (street works);
or
- (e) anything else relating to the construction or operation of the authorised development.

(2) Such an agreement (or other appropriate arrangement) may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

18.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development 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, public sewer or drain.

(2) Any dispute arising from the making of connections to, or the use of, a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works under the powers conferred by this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(6) The undertaker must 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, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a water and sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 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 undertaker—

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

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it.

(a) S.I. 2010/675, to which there are amendments not relevant to this Order.

(b) 1991 c. 57.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (8) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

21.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

Time limit for exercise of authority to acquire land compulsorily

22.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

23.—(1) Subject to paragraphs (2) and (3) the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which the land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as by acquiring existing rights.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 10 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purposes specified in relation to that land in column (2) of that Schedule.

(3) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in columns (1) and (2) of Schedule 10.

(4) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as substituted by article 27 (acquisition of part of certain properties), where the undertaker acquires an existing right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(6) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State transfer the power to acquire such rights or impose such covenants to the statutory undertaker in question.

(a) 1981 c. 66.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(8) Any person who suffers loss as a result of the creation of a right or the imposition of a restrictive covenant in relation to any private right or covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of disputed compensation) of the 1961 Act.

Private rights

24.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over Order land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or, where appropriate, the acquisition of rights or imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,
it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

(7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil and air-space only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or the air-space over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(a) 1981 c. 66.

(3) Paragraph (2) does not prevent article 27 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

27.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat is, unless the undertaker agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (expectation of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has by the end of that period served a notice of entry under section 11 of the 1965 Act identifying the purposes for which temporary possession is required, or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and buildings and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from—

- (a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of or the air-space over (or rights in the subsoil of or air-space over) that land under article 26 (acquisition of subsoil and air-space only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining authorised development

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and buildings and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

31. The undertaker may extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 10 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and

- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration in accordance with article 36 (arbitration) to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in

(a) 2003 c. 21.

consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Felling or lopping of trees

34.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Certification of plans etc.

35.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the approved development plans listed in requirement 1 of Schedule 2 (requirements);
- (b) the book of reference;
- (c) the draft Construction Environmental Management Plan (referred to in requirement 1);
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the land plans;
- (g) the sections;
- (h) the street plans; and
- (i) the works plans,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

36. Any difference under any provision of this Order, unless otherwise provided for in this Order or agreed between the parties involved in such difference, is to 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.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) 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 only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(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 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 communication given by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c. 30.

(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
- (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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Signed by authority of the Secretary of State for Transport

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

12th January 2015

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the County of Northumberland

A nationally significant infrastructure project as defined in sections 14 and 22(a) of the 2008 Act, and associated development within the meaning of section 115(2) of the 2008 Act, comprising:

Work No. 1 – construction of a highway 3.8 kilometres in length being a single carriageway road from the A197 Whorral Bank roundabout, westward to the A1 trunk road south of Fairmoor, to include—

- (i) modification of the existing Whorral Bank roundabout to connect in the new road;
- (ii) the construction of a drain and drainage basin to accommodate intermittent flow from the small tributary of the River Wansbeck at Pegswood Moor;
- (iii) the construction of a bridge over the How Burn tributary of the River Wansbeck;
- (iv) the construction of a new roundabout west of How Burn to provide future access to the St. George’s Hospital development site;
- (v) the construction of a drainage pond and associated works adjacent to the westbound carriageway in the vicinity of the roundabout west of How Burn;
- (vi) the construction of a bridge where the proposed road crosses the existing Fulbeck Lane (U6010);
- (vii) the construction of a bridge over the Cotting Burn tributary of the River Wansbeck;

(a) The authorised development was a nationally significant infrastructure project for the purposes of section 22 as at the date of application in relation to this Order (15 July 2013). Section 22 was subsequently substituted by SI 2013/1883, which came into force on 25 July 2013.

- (viii) the construction of a new roundabout at Northgate to connect to the existing highway network (A192) at Lane End;
- (ix) the construction of a drain and drainage basin to the south of the new roundabout at Northgate adjacent to the A192;
- (x) the construction of an all movements grade separated junction at the A1 trunk road west of Lancaster Park including two roundabouts one each side of the A1 trunk road in dumbbell configuration connected beneath the A1 trunk road by the St. Leonard's underpass and together with linking slip roads to access and egress the A1 trunk road;
- (xi) the construction of a single carriageway link from the proposed grade separated junction at the A1 westward to St. Leonard's Lane;
- (xii) the construction of a 2.5 metre wide shared use footway and cycle track with additional 2 metre grass verge separated from the carriageway on the south side of the new road;
- (xiii) the construction of an open ditch drain and drainage basin connecting to Benridge Burn;
- (xiv) the creation of earthworks and the establishment of planting to mitigate adverse impacts along the route of the road;
- (xv) creation of private means of access to premises and farm land at various locations in the vicinity of the route;
- (xvi) the creation of two dedicated bus laybys one on either side of the carriageway west of the new roundabout at Northgate;
- (xvii) the creation of two additional laybys for use by all vehicles one on either side of the carriageway east of St. George's roundabout (eastbound) and west of Whorral Bank roundabout (westbound); and
- (xviii) the construction of a drain and drainage basin adjacent to Cotting Burn.

Work No. 2 – demolition of buildings and property known as Rose Cottage, Fulbeck Lane.

Work No. 3 – offline diversion and lowering of a 36-inch steel water main (NWL Southern Trunk Main) through East Lane End Farm land.

Work No. 4 – construction work for diversion of public footpaths from Lancaster Park to St. Leonard's Lane and north of Morpeth to Hebron.

Work No. 5 – removal of existing carriageway surfacing and replacement with topsoil and grass on existing A1 slip roads to and from the A192.

And in connection with such works further development within the Order limits consisting of—

- (a) ramps, means of access, footpaths and bridleways;
- (b) embankments, abutments, foundations, retaining walls, drainage, highway lighting, fencing, cuttings, viaducts, aprons and culverts;
- (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (d) works to alter the course of or otherwise interfere with a watercourse other than a navigable watercourse;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (f) works for the benefit of land affected by the authorised development;
- (g) works required for the strengthening, improvement, maintenance or reconstruction of any streets and for the provision of all necessary permanent traffic signs; and
- (h) such other works including contractors compounds, working sites, storage areas and works of demolition as may be necessary or expedient for the purposes of or in connection with the authorised development.

SCHEDULE 2

Article 2

REQUIREMENTS

Interpretation

1. In this Schedule—

“approved development plans” means the following plans as certified by the Secretary of State for the purposes of this Order—

HE092631/0/A197/01/07 Rev.P – Scheme Proposals;

HE092631/0/A197/01/51 Rev.A – Northgate Roundabout Potential Traffic Management Phasing;

HE092631/0/A197/01/56 Rev.D – Site Set-up and Bulk Earthworks Strategy;

HE092631/0/A197/01/57 – St. Leonard’s Grade Separated Junction: Construction Traffic Management Phases;

HE092631/0/A197/01/66 Rev.D – Proposals for Public Rights of Way and Other Paths, sheet 1 of 2;

HE092631/0/A197/01/67 Rev.D – Proposals for Public Rights of Way and Other Paths, sheet 2 of 2;

HE092631/0/A197/01/80 Rev.D – Scheme Proposals: Drainage Networks and Key Plan;

HE092631/0/A197/01/84 Rev.F – Environmental Strategy;

HE092631/0/A197/01/85 Rev.B – Typical Cross Sections;

HE092631/0/A197/01/93 Rev.C – Construction Outlines;

HE092631/0/A197/01/130 – Traffic Management during Construction;

HE092631/0/A197/20/01 Rev.C – Existing Public Utilities Apparatus;

HE082631/2/A197/B2/02 Rev.C – St. Leonard’s Underpass Plan Layout and Details;

HE092631/2/A197/B3/07 Rev.C – Cotting Burn Bridge General Arrangement;

HE092631/2/A197/B4/07 Rev.B – Fulbeck Lane Bridge Plan, Section, Detail and Elevation;

HE092631/2/A197/B5/16 Rev.C – How Burn Wood Bridge General Arrangement;

HE092631/2/A197/B8/01 Rev.A – West Lane End Farm General Arrangement; and

HE092631/SL/0027/ENV Rev.A – Preliminary Lighting Proposals;

“CEMP” means a Construction Environmental Management Plan, substantially in the form of Revision 3 (dated February 2014) of the draft Construction Environmental Management Plan, certified by the Secretary of State for the purposes of this Order; and

“the link road” means the new highway forming part of the authorised development described in Work No. 1.

Approvals of submitted schemes

2.—(1) Where, under any of the requirements in this Schedule, the approval or agreement of the relevant planning authority is required—

(a) the matter which requires approval or agreement must be submitted in writing for such approval or agreement; and

(b) the approval or agreement must be given in writing.

(2) Where any requirement provides that the authorised development is to be carried out in accordance with details, or a scheme, plan or other document approved or agreed by the relevant

planning authority, the approved or agreed details, scheme, plan or other document is taken to include any amendments or revisions subsequently approved or agreed by the relevant planning authority.

(3) Where any requirement specifies “unless otherwise approved by the relevant planning authority” such approval must not be given except in relation to minor or immaterial changes where the subject-matter of the approval sought (either by itself or in combination with other changes or proposed changes) is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement and such an approval must not be given in respect of any land outside the Order limits.

(4) The relevant planning authority must take into account the relevant mitigation and other measures described in the environmental statement before giving any approval or agreement under any of the requirements in this Schedule and such an approval or agreement must incorporate the mitigation measures and must not be given in respect of any land outside the Order limits.

(5) The relevant planning authority must take into account the relevant mitigation and other measures described in the CEMP before giving any approval or agreement under any of the requirements in this Schedule and such an approval or agreement must not be given in respect of any land outside the Order limits.

The Construction Environmental Management Plan

3.—(1) The authorised development must not commence until the CEMP has been submitted to and approved by the relevant planning authority.

(2) In accordance with the requirements of the environmental statement, the CEMP must include—

- (a) a framework to identify and manage the environmental issues from the authorised development;
- (b) measures to ensure nuisance levels as a result of the authorised development are kept to a minimum;
- (c) measures to comply with regulatory requirements and environmental commitments;
- (d) a programme for compliance auditing and inspection; and
- (e) measures to ensure that the project is carried out in line with Northumberland County Council’s environmental principles and policies.

(3) The CEMP must cover the following topics—

- (a) public relations and complaints;
- (b) air quality;
- (c) archaeology and cultural heritage;
- (d) ecology and nature conservation;
- (e) landscape and visual effects;
- (f) land use including a soil management plan;
- (g) noise and vibration;
- (h) pedestrians, cyclists, equestrians and the local community;
- (i) the water environment;
- (j) geology and soils;
- (k) vehicular traffic; and
- (l) waste, including a site waste management plan.

(4) The CEMP must describe measures and processes to meet the requirements of the mitigation described in the environmental statement to be implemented during construction of the authorised development.

(5) In the event of changes in environmental legislation, best practice or lessons learned that are relevant to the authorised development during its construction, a revised CEMP reflecting those changes must be submitted to the relevant planning authority for approval.

(6) Subject to sub-paragraph (7) construction is to take place only in accordance with the CEMP as approved from time to time.

(7) The requirements of this Schedule prevail in the event of any conflict with any provision of the CEMP.

Detailed design

4. The authorised development must not be carried out otherwise than in accordance with the approved development plans.

External Materials

5. No development is to take place until samples of the materials to be used in the construction of the external surfaces of the approved development have been approved in writing by the relevant planning authority. Development must be carried out only in accordance with the approved details.

St. Leonard's junction

6.—(1) The authorised development must not commence until details of the design of the proposed St. Leonard's all movements grade separated junction together with linking slip roads to access and egress the A1 trunk road referred to as Work No. 1(x) of Schedule 1 (authorised development) have been submitted to and approved in writing by the Secretary of State for Transport.

(2) The highway works approved in accordance with sub paragraph (1) must be completed in accordance with the approved details and the CEMP.

Landscaping and biosecurity

7.—(1) The authorised development must not commence until a detailed scheme for the landscaping of the land within the Order limits, taking into account the environmental statement and the CEMP, has been submitted to and approved by the relevant planning authority.

(2) The detailed landscape scheme must apply the Environmental Strategy (approved development plan HE092631/0/A197/01/84 Rev.F) and the planting proposals presented in Appendix 8.1 of the environmental statement. The landscaping scheme must include details of the following—

- (a) the final soil profiles and contours of the land within the Order limits;
- (b) provision for the reinstatement of watercourses and surface drainage;
- (c) the final field pattern to be achieved, including details of hedges, walls, fences, gates and access tracks;
- (d) a tree, shrub, hedge and marginal planting specification giving details of the phasing, area, distribution, type and density of planting throughout the land within the Order limits, the timing of planting, and requirements as to the future maintenance of the planted trees, shrubs, hedges and marginal planting;
- (e) a specification giving details of seed mixes for grassland areas and their future maintenance;
- (f) details of timescales for completion of the landscaping works described by sub-paragraphs (a) to (e); and
- (g) a specification to minimise erosion and weed infestation of all mounds in which soils are to be stored for more than 6 months, or over the winter period.

(3) The requirements of the approved landscape scheme must be complied with in carrying out the authorised development.

(4) No excavation works, soil stripping or any movement of soils forming part of or associated with the authorised development are to be begun until details of a scheme to prevent the spread of any soil borne plant or animal diseases has been submitted to and approved in writing by the relevant planning authority in consultation with the Department for Environment Food and Rural Affairs.

(5) Afterwards, excavation works, soil stripping and any movement of soil forming part of or associated with the authorised development must be undertaken only in accordance with the scheme approved under sub-paragraph (4).

(6) The following provisions must be applied throughout the construction of the authorised development—

- (a) no topsoil or subsoil is to be transported from the land within the Order limits unless otherwise approved by the relevant planning authority;
- (b) all topsoils, subsoils and other soil-making materials must be stored, according to their quality, in separate mounds which do not overlap and a minimum stand-off distance of 3.0 metres must be left undisturbed between topsoil mounds and perimeter ditches or fencing;
- (c) once formed, all mounds in which soils are to be stored for more than 6 months, or over the winter period, must be grass seeded in accordance with the specification to minimise erosion and weed infestation approved by the relevant planning authority in accordance with sub-paragraph (2)(g); and
- (d) within 3 months of the formation of topsoil, subsoil and soil making material mounds, a plan indicating the areas stripped of such materials, location of each mound and balancing the quantities of material stored with the proposed depth and texture of the soil profile to be replaced following restoration works must be submitted for approval to the relevant planning authority and the restoration works must be carried out in accordance with the approved plan.

Trees and hedgerows

8.—(1) The authorised development must not commence until a tree survey has been carried out and a tree survey report has been submitted to and approved by the relevant planning authority.

(2) The tree survey must be carried out to British Standard 5837:2012 – “Trees in relation to design, demolition and construction – Recommendations”.

(3) The tree survey must include all trees greater than 75 millimetres in diameter at 1.5 metres above ground level, within 50 metres of the highway boundary of the scheme, as shown on the street plans.

(4) The tree survey report must describe the trees that have been surveyed and provide recommendations and plans for tree protection measures consistent with British Standard 5837:2012.

(5) The authorised development must be carried out in accordance with the recommendations and plans in the approved tree survey report.

(6) No hedge, hedgerow or tree is to be removed between 1 March and 31 August (31 October in barn owl sensitive areas) inclusive in any year unless otherwise approved by the relevant planning authority in consultation with a qualified ecologist.

Public rights of way

9. A stile, of a design approved by the relevant planning authority, must be provided at the south-eastern end of the diverted Public Footpath No. 13.

Fencing and other means of enclosure

10.—(1) The authorised development must not commence until details of all proposed permanent and temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

(2) The construction sites within the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed on completion of the authorised development.

(4) Any approved permanent fencing forming part of the authorised development must be completed before the link road is opened to public traffic.

Drainage and water pollution post-construction

11.—(1) The authorised development must not be commenced until a surface water drainage scheme detailing how flood risk will be managed, how highway runoff will be treated before being discharged to a watercourse and the spillage protection measures to be provided has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The measures stipulated in the approved surface water drainage scheme must be completed before the link road is opened to public traffic, and subsequently retained.

(3) The surface water drainage scheme must include—

(a) compliance with the Flood Risk Assessment and the following—

(i) a 1 in 2 year return period storm, with storage and attenuation to accommodate a 1 in 100 year return period storm without flooding outside the system or the designated storage areas;

(ii) discharges to watercourses to be greenfield runoff rates not greater than 4 litres per second per hectare; where they coincide with existing flows then the discharge rate must be the sum of the greenfield runoff and the existing flow; and

(iii) climate change allowance of +30% for the scheme lifetime;

(b) details of the drainage measures to be provided to manage flood risk;

(c) details of measures to treat highway runoff from the authorised development to avoid pollution of receiving watercourse;

(d) details of measures to protect receiving watercourses from spillages of pollutants on the link road;

(e) measures to prevent the infiltration of highway runoff into the ground;

(f) details of measures to manage overland flow intercepted by the authorised development; and

(g) details of how the measures in the surface water drainage scheme are to be maintained and managed after completion of the authorised development.

(4) For the purposes of this requirement, the expression “highway runoff” means water runoff from the surface of the completed link road, A1 trunk road within the Order limits, and their embankments.

Surface water drainage during construction

12.—(1) The authorised development must not be commenced until a construction surface water drainage scheme for the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) In accordance with chapter 13 of the environmental statement, the approved construction surface water drainage scheme must include—

(a) a construction site drainage plan; and

(b) a construction sediment management plan.

(3) The construction site drainage plan mentioned in paragraph (2) must stipulate measures to ensure that flood risk is managed on the land within the Order limits and to prevent the unacceptable increase of the flood risk elsewhere. The plan must include—

- (a) measures to ensure that all discharge rates to neighbouring watercourses will be restricted to existing greenfield runoff rates unless otherwise agreed by the relevant planning authority in consultation with the lead local flood authority;
- (b) details of the drainage measures to be provided during the construction period to manage flood risk; and
- (c) details of the timescales for carrying out the measures in the scheme.

(4) The construction sediment management plan mentioned in paragraph (2) must stipulate measures for the management of sediments suspended in or otherwise transported by runoff originating from construction of the authorised development. The plan must include details of pollution prevention measures that will be taken to protect ground and surface water quality.

(5) The works required by the approved construction surface water drainage scheme must be completed in accordance with the timescales specified in the scheme and (where required by the scheme) implemented throughout construction of the authorised development.

Watercourse crossings

13.—(1) The authorised development must not be commenced until details of the proposed structures for the crossing of How Burn and Cotting Burn, taking into account the requirements of the environmental statement and the CEMP, have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The watercourse crossings of the How Burn and the Cotting Burn are to be constructed as approved.

Contamination

14.—(1) If, during the construction of the authorised development, contaminated land not previously identified in the environmental statement is found within the Order limits then no further works or actions relating to the authorised development are to be engaged or carried out (unless otherwise approved by the relevant planning authority) until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(2) Where remediation measures are required by the investigation and remediation scheme then the remediation measures must be carried out no later than the times stipulated in the investigation and remediation scheme and in accordance with the investigation and remediation scheme.

(3) In this requirement, expressions used both in this requirement and section 78A (preliminary) of the Environmental Protection Act 1990(a) have the same meaning as in that section.

15. Oil, petrol, diesel oil, lubricant or paint is only to be stored on the land within the Order limits within impervious bunds or enclosures and each bund or enclosure must have a volume of not less than 110% of the volume of the material stored.

(a) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and subsequently amended by section 86(1) and (2) of the Water Act 2003 (c. 37) and S.I. 2013/755.

Archaeology

16.—(1) The authorised development must not commence until a programme of mitigation of the scheme’s effects on archaeology and heritage assets, in accordance with mitigation items 34 to 38 of the CEMP, including assessment of the evaluation excavations that have taken place, has been submitted to and approved by the relevant planning authority.

(2) The approved programme of mitigation must comprise 3 stages of work. Each stage must be completed and approved by the relevant planning authority before it can be discharged. In particular—

- (a) no authorised development or mitigation is to commence until a written scheme of investigation, compliant with the CEMP, has been submitted to and approved by the relevant planning authority;
- (b) archaeological recording required by the CEMP must be completed in accordance with the approved written scheme of investigation no later than completion of the topsoil and subsoil strip; and recording of the earthworks must be completed before the start of construction; and
- (c) all analysis reporting publication and archiving must be completed in accordance with the approved written scheme of investigation no later than 6 months following completion of fieldwork.

(3) Photographic records of the settings of the 3 heritage assets, identified in table 6.7 “Residual Operational Effects” in chapter 6 of the environmental statement, must be made in accordance with the written scheme of investigation and a summary report issued to the relevant planning authority before any works affecting the settings of those heritage assets is commenced.

(4) The authorised development must not commence until a fencing scheme to ensure that all areas of archaeological earthworks (including ridge and furrow earthworks) are protected from accidental damage throughout the construction of the authorised development has been submitted to and approved by the relevant planning authority.

(5) The fencing required by the approved fencing scheme must be erected before the construction of the link road is commenced and kept in good repair throughout the construction of the authorised development.

Construction traffic

17.—(1) The authorised development must not commence until a detailed traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the highway authority for the highway in question.

(2) The approved traffic management plan must include details of the preferred routing for all delivery and construction traffic as shown on approved development plans HE092631/0/A197/01/51 Rev.A, HE092631/0/A197/1/56 Rev.D, HE092631/0/A197/01/57 and HE092631/0/A197/01/130, a schedule and timing of vehicular movements, details of escorts for abnormal loads, the form of the notices mentioned at sub-paragraph (3) and details of any temporary directional and warning signage to be installed.

(3) The approved traffic management plan must provide that notices in a form approved by the relevant planning authority are to be installed and maintained throughout the construction of the authorised development at every entrance and exit to or from the land within the Order limits indicating to drivers the route specified in the traffic management plan for traffic entering and leaving the land within the Order limits.

(4) The approved traffic management plan must be complied with throughout the construction of the authorised development.

Turning facilities

18.—(1) The authorised development must not commence until a scheme which provides details of turning facilities for all vehicles accessing the land within the Order limits during the

construction of the authorised development, including abnormal loads but excluding traffic following routes which are signed for public use, has been submitted to and approved by the relevant planning authority in consultation with the highway authority and such turning facilities must enable all vehicles to enter and leave the highway in a forward direction.

(2) The turning facilities scheme must include a swept path analysis of the proposed turning facilities.

(3) The turning facilities must be provided in accordance with the approved scheme before the construction of the link road is commenced and must be maintained, kept clear of obstruction and available to all vehicles at all times throughout the construction of the authorised development.

Control of noise during construction of the authorised development

19.—(1) The authorised development must not commence until a scheme for noise management during the construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) Taking into account the requirements of chapter 10 of the environmental statement and the CEMP (mitigation items 100 to 116), the scheme for noise management during the construction of the authorised development must set out the particulars of—

- (a) the construction of the authorised development and the methods by which it is to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the construction of the authorised development, including any noise limits; and
- (c) the measures for monitoring the noise emitted by the carrying out of the authorised development to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

(3) The authorised development must be undertaken in accordance with the approved noise management scheme.

Construction hours

20.—(1) Works or activities forming any part of the authorised development must not take place on Sundays or public holidays or other than between 0800 and 1800 hours on weekdays or other than between 0800 and 1300 hours on Saturdays, unless otherwise approved by the relevant planning authority.

(2) Nothing in paragraph (1) precludes a start-up period from 0700 to 0800 hours and a shut-down period from 1800 to 1900 hours on weekdays, excluding public holidays. During the start-up period and the shut-down period, no activity must take place on the site that is audible at the site boundary.

(3) Exceptionally, short-term works outside the normal permitted hours and days may be agreed with the relevant planning authority or permitted under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(a) and the conditions attached to any consent must be complied with.

Control of dust emissions

21.—(1) The authorised development must not commence until a scheme for the management and mitigation of dust emissions caused by the carrying out of the authorised development has been submitted to and approved by the relevant planning authority; and the approved scheme for the management and mitigation of dust must be in accordance with the requirements of the environmental statement and the CEMP.

(a) 1974 c. 40.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented throughout the construction of the authorised development.

Control of artificial light emissions

22.—(1) The authorised development must not commence until a written scheme for the management and mitigation of artificial light emissions during the construction and operation of the authorised development, taking into account the requirements of the environmental statement and the CEMP in order to protect sensitive receptors, has been submitted to and approved by the relevant planning authority.

(2) The authorised development must be undertaken in accordance with the approved scheme for the management and mitigation of artificial light emissions.

Control of deposits on highways

23.—(1) The authorised development must not commence until a scheme to minimise the deposit of mud, stone, gravel or other debris or materials by any vehicles entering a public road from elsewhere on land within the Order limits has been submitted to and approved by the relevant planning authority in consultation with the highway authority and the Highways Agency.

(2) The approved scheme must include details of the provision, locations, maintenance and use of wheel wash and vehicle body washing equipment within the land within the Order limits throughout the construction of the authorised works.

(3) All vehicles entering a public road from elsewhere on the land within the Order limits must be cleaned or otherwise treated in accordance with the approved scheme.

Protected species and nature conservation during construction

24.—(1) The authorised development must not commence until a Construction Ecological Management Plan (describing the protective measures to be implemented for wildlife species and habitats protected by law and taking into account the requirements of the CEMP and the environmental statement) has been submitted to and approved by the relevant planning authority.

(2) The Construction Ecological Management Plan must include—

- (a) a summary of the scheme location, description and timing of construction works, and potential impacts as described in the environmental statement;
- (b) a map and record of checking surveys for protected species within the land within the Order limits;
- (c) method statements for pre-construction surveys (to include: bats, red squirrel, reptiles, barn owl, water vole, otter, and badgers);
- (d) details of ecological mitigation, including timing and working techniques, to minimise the risk of adversely affecting any protected species or habitats identified within the land within the Order limits and confirmed as requiring protection through legislation or following best practice guidance prevailing at the time of construction;
- (e) a description of proposals for ecological and species monitoring; and
- (f) details of the mitigation measures to be implemented for wildlife species and habitats protected by law (barn owl, bats, otters, breeding birds, badgers, and any other protected species or habitat identified during pre-construction surveys and not identified previously as requiring mitigation) which have been submitted to and approved by the relevant planning authority.

(3) The map and record of checking surveys for protected species mentioned in sub-paragraph (1)(b) must derive from information which is not more than 2 years old at the time when the Construction Ecological Management Plan is submitted to the relevant planning authority.

(4) The authorised development is to take place only in accordance with the approved Construction Ecological Management Plan.

Protected species and nature conservation post construction

25.—(1) The authorised development must not commence until an Operational Ecological Management Plan (“OEMP”) has been submitted to and approved by the relevant planning authority. The OEMP must include a description of all the mitigation and enhancement measures to be provided for wildlife species and habitats protected by law as described by the environmental statement. The approved details must include:

- (a) the provision of appropriate alternative bat roosts and mitigation as described by the environmental statement and enforced by licences issued by Natural England;
- (b) details of a mammal tunnel constructed beneath the new bypass near Pegswood Moor, as described by the environmental statement;
- (c) details of appropriately designed mammal ledges through new crossing structures of How Burn and Cotting Burn;
- (d) details of an artificial otter holt at a suitable location close to How Burn;
- (e) the provision of suitable barn owl boxes;
- (f) details of fencing to be erected around the new development to prevent deer, badger and otters crossing the carriageway;
- (g) details of proposed habitat enhancement; and
- (h) a programme for monitoring and management of mitigation and enhancement measures for a period of 3 years after the first date of opening of the authorised development.

(2) The OEMP must be based on a record of checking surveys for protected species (including bats, red squirrel, reptiles, barn owl, water vole, otter, and badgers) which is not more than 2 years old at the time when the details of the mitigation and enhancement measures are submitted to the relevant planning authority.

(3) Measures identified in the approved OEMP must be implemented as described in the approved OEMP.

Land maintenance

26. From the commencement of the authorised development until its completion, the following are to be carried out throughout the land within the Order limits—

- (a) the maintenance of fences in a stock-proof condition between any areas used for the authorised development and any adjoining agricultural land;
- (b) the retention of fencing around trees and hedgerows; and
- (c) all areas including stacks of soil and overburden to be kept free of weeds.

Site compounds

27.—(1) The authorised development must not commence until details of each site compound, including areas for the storage of materials and machinery, operative parking within the land within the Order limits and proposals and timetables for the restoration of the site compounds upon completion of construction have been submitted to and approved by the relevant planning authority.

(2) Each site compound, storage area and operative parking area must (unless otherwise approved by the relevant planning authority) be provided in accordance with the details approved under paragraph (1) before construction of the link road is commenced and subsequently maintained, reserved and used for their specific purposes for the full duration of the construction of the authorised development. No other part of the land within the Order limits is to be used for any of those purposes.

(3) Site compounds, storage areas and parking areas must be restored in accordance with the approved proposals and timetables unless otherwise approved by the relevant planning authority.

Demolition of Rose Cottage

28.—(1) The demolition of Rose Cottage, Fulbeck Lane, Morpeth NE61 3JX must not be commenced until a demolition method statement has been submitted to and approved by the relevant planning authority.

(2) The demolition of Rose Cottage must not be carried out otherwise than in accordance with the approved demolition method statement and the CEMP.

Road safety audit and monitoring

29.—(1) Road safety audits and monitoring must be undertaken in accordance with Volume 5 Section 2 Part 2 (November 2003) of the Design Manual for Roads and Bridges.

(2) All parts of the authorised development that are to be local highways must be subject to a Stage 3 road safety audit no later than 1 month after the link road is opened to road users.

(3) All parts of the authorised development that are to be local highways, and St. Leonard's Lane and Spital Hill, must be subject to Stage 4 Monitoring. Monitoring reports must be submitted to the relevant planning authority and any recommendations in the reports that are approved by the relevant planning authority must be implemented in the approved timescale.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Description of work</i>
County of Northumberland	A192	From a point 35 metres south east of the access to Butley Ben/At Last, south east for a distance of 395 metres shown on plan number HE092631/0/A197/02/04A of the street plans.	To accommodate Northgate roundabout.
	U6010	From a point 35 metres north of the south access to Fulbeck Grange, northwards for a distance of 250 metres shown on plan number HE092631/0/A197/02/05A of the street plans.	To accommodate Fulbeck Lane bridge.
	C148	From a point 345 metres south of the junction with the C144, southward for a distance of 110 metres shown on plan number HE092631/0/A197/02/02B of the street plans.	To accommodate connection from St. Leonard's underpass.
	A197	From Whorral Bank roundabout to a point 20 metres south of the roundabout shown on plan number HE092631/0/A197/02/07A of the street plans.	To accommodate connection to Whorral Bank roundabout.

SCHEDULE 4

Article 10

STREETS AND PRIVATE ACCESSES TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> Area	<i>(2)</i> Street to be stopped up	<i>(3)</i> Extent of stopping up	<i>(4)</i> New street to be substituted
County of Northumberland	A1 Trunk road Northbound merge slip road	From junction with U6098 northwards for a distance of 161 metres marked H on plan number HE092631/0/A197/02/04A of the street plans.	New St. Leonard's northbound merge slip road.
	A1 Trunk road Southbound diverge slip road	From junction with A192/private access leading to Northgate hospital northward for a distance of 204 metres marked I on plan number HE092631/0/A197/02/04A of the street plans.	New St. Leonard's southbound diverge slip road together with new footway on the line of the former slip road marked C on plan number HE092631/0/A197/02/04A of the street plans.
	U6010	From immediately south of the southern private access to Kater Dene southwards for a distance of 94 metres.	From immediately south of the northern private access to Kater Dene for a distance of 112 metres crossing the new road via the new Fulbeck Lane Bridge marked E on plan number HE092631/0/A197/02/05A of the street plans.

PART 2

PRIVATE ACCESSES FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New private access to be substituted</i>
County of Northumberland	Access to OS Field No 9000 shown marked 'a' on plan number HE092631/0/A197/02/02B of the street plans.	From the A1 northbound for a distance westwards of 5 metres.	New accesses shown marked 1 and 2 on plan number HE092631/0/A197/02/02B of the street plans.
	Access to OS Field No 0071 shown marked 'b' on plan number HE092631/0/A197/02/02B of the street plans.	From the A1 southbound for a distance of 6 metres.	New access shown between the points marked 3 on the street plans at St. Leonard's roundabout along new highway marked 'D' shown on plan number HE092631/0/A197/02/03A of the street plans.
	Access shown marked 'c' on plan number HE092631/0/A197/02/03A of the street plans.	From A192 westwards for a distance of 5 metres.	New access shown between the points marked 5 on plan number HE092631/0/A197/02/03A of the street plans.
	Access shown marked 'd' on plan number HE092631/0/A197/02/03A of the street plans.	Between OS Field No 5924 and Butley Ben paddock.	New accesses off the north leg of the Northgate roundabout shown marked 6 and 7 on plan number HE092631/0/A197/02/03A of the street plans.
	Access shown marked 'f' on plan number HE092631/0/A197/02/05A of the street plans.	Access to Kater Dene sheep pen.	New access shown marked 11 on plan number HE092631/0/A197/02/05A of the street plans extending eastwards 11 metres along the new footway and cycle track.

PART 3

PRIVATE ACCESSES FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private access to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Northumberland	Access shown marked 'e' on plan number HE092631/0/A197/02/05A of the street plans.	Access to Rose Cottage (property is to be demolished as part of the authorised development).

VARIATION OF PUBLIC RIGHTS OF WAY

PART 1

SECTIONS OF PUBLIC PATH STOPPED UP

1. The section of Public Footpath No. 21 (Parish of Mitford) from a point 470 metres north of Spital Hill on St. Leonard's Lane, in an easterly direction for a distance of 40 metres to the A1 Trunk Road, shown thick hatched and marked 'PF21(Mitford)' on plan number HE092631/0/A197/02/02B of the street plans.

2. The section of Public Footpath No. 13 (Parish of Mitford) from a point 530 metres north of Spital Hill on the east side of the A1 Trunk Road for a distance of 485 metres to a point to the rear of the property known as No 4 Pinewood Drive, Lancaster Park, shown thick hatched and marked 'PF13 (Mitford)' on plan number HE092631/0/A197/02/02B of the street plans.

3. The section of Public Footpath No. 9 (Parish of Hebron) from a point 755 metres south of its junction with the C130 southwards for a distance of 30 metres shown thick hatched between the northernmost point marked 'x' and the southernmost point marked 'y' on plan number HE092631/0/A197/02/06A of the street plans.

PART 2

SECTIONS OF PUBLIC PATH CREATED

1. A new section of Public Footpath No. 13 (Parish of Mitford) with a width of 1.5 metres from the St. Leonard's east roundabout south eastwards for a distance of 34 metres sharing a route with private means of access to OS Field No. 0071, then north eastwards for a distance of 80 metres sharing a route with private means of access to OS Field No. 3283, then south eastwards for a distance of 164 metres to the existing stile by the rear of the property known as No. 4 Pinewood Drive, Lancaster Park, shown between the points marked 'D' on plan number HE092631/0/A197/02/02B of the street plans.

2. A new section of Public Footpath No. 9 (Parish of Hebron), with a width of 1.5 metres from a point 755 metres south of its junction with the C130 south west, for a distance of 5 metres and south, for a distance of 10 metres, to the northern boundary of the carriageway of the new road forming part of the authorised development.

3. A new section of Public Footpath No. 9 (Parish of Hebron) from a point at the southern boundary of the carriageway of the new road forming part of the authorised development 785 metres south of the junction of Public Footpath No. 9 with the C130, to rejoin existing Public Footpath No. 9, at the point marked y on plan number HE092631/0/A197/02/06A of the street plans.

SCHEDULE 6

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF USE OF STREETS

<i>(1)</i> Area	<i>(2)</i> Street subject to temporary prohibition or restriction of use	<i>(3)</i> Extent	<i>(4)</i> Description of temporary prohibition or restriction of use
County of Northumberland	A192	From a point 35 metres south east of the access to Butley Ben/At Last, south east for a distance of 395 metres shown on plan number HE092631/0/A197/02/03A of the street plans.	As required on safety grounds during construction works for and connection into Northgate roundabout.
	U6010	From a point 35 metres north of the south access to Fulbeck Grange, northwards for a distance of 250 metres shown on plan number HE092631/0/A197/02/05A of the street plans.	As required on safety grounds during construction works for the new road and Fulbeck Lane bridge.
	C148	From a point 345 metres south of the junction with the C144, southward for a distance of 110 metres shown on plan number HE092631/0/A197/02/02B of the street plans.	As required on safety grounds during construction works for and connection to St. Leonard's underpass.
	A197	Whorral Bank roundabout to a point 20 metres south of the roundabout shown on plan number HE092631/0/A197/02/07A of the street plans.	As required on safety grounds during construction works for the new road and connection into Whorral Bank roundabout.

SCHEDULE 7

Article 13

STREETS SUBJECT TO ALTERATION OF LAYOUT

PART 1

STREETS SUBJECT TO TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> Area	<i>(2)</i> Street subject to alteration of layout	<i>(3)</i> Extent	<i>(4)</i> Description of alteration
County of Northumberland	A1 Trunk road	Northbound carriageway from a point 69 metres south of the Fairmoor bridge, southwards for a distance of 1130 metres.	Diversion onto new diverge/merge slip roads while underpass is constructed – ref Drawing No. HE092631/0/A197/01/57 (MNB Part 6.3.1).
	A1 Trunk road	Southbound carriageway from a point 22 metres south of the Fairmoor bridge, southwards for a distance of 1105 metres.	Diversion onto new diverge/merge slip roads while underpass is constructed – ref Drawing No. HE092631/0/A197/01/57 (MNB Part 6.3.1).

PART 2

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street subject to alteration of layout</i>	<i>(3) Extent</i>	<i>(4) Description of alteration</i>
County of Northumberland	A1 Trunk road	Northbound carriageway from a point 846 metres south of the Fairmoor bridge, southwards for a distance of 350 metres shown on plan number HE092631/0/A197/02/02B of the street plans.	To alignment and level providing diverge/egress slip road from the northbound carriageway of the A1 Trunk Road.
	A1 Trunk road	Southbound carriageway from a point 820 metres south of the Fairmoor bridge, southwards for a distance of 295 metres shown on plan number HE092631/0/A197/02/02B of the street plans.	To alignment and level providing merge/access slip road to the southbound carriageway of the A1 Trunk Road.
	A1 Trunk road	Northbound carriageway from a point 69 metres south of the Fairmoor bridge, southwards for a distance of 460 metres shown on plan number HE092631/0/A197/02/03A of the street plans.	To alignment and level providing merge/access slip road to the northbound carriageway of the A1 Trunk Road.
	A1 Trunk road	Southbound carriageway from a point 22 metres south of the Fairmoor bridge, southwards for a distance of 475 metres shown on plan number HE092631/0/A197/02/03A of the street plans.	To alignment and level providing diverge/egress slip road to the southbound carriageway of the A1 Trunk Road.
	A192	From a point 35 metres south east of the access to Butley Ben/At Last, south east for a distance of 395 metres shown on plan number HE092631/0/A197/02/03A of the street plans.	To alignment and level to accommodate the Northgate roundabout.
	A197	Whorral Bank roundabout and the A197 to a point 20 metres south of the roundabout shown on plan number HE092631/0/A197/02/07A of the street plans.	To accommodate connection of the eastern end of the new road to Whorral Bank roundabout.

<i>(1) Area</i>	<i>(2) Street subject to alteration of layout</i>	<i>(3) Extent</i>	<i>(4) Description of alteration</i>
	U6010	From a point 25 metres south of the northern exit from Fulbeck Grange, northwards for a distance of 80 metres shown on plan number HE092631/0/A197/02/05A of the street plans.	To alignment and level to accommodate the new Fulbeck Lane Bridge.
	U6010	From the southern access to Kater Dene, northwards for 75 metres shown on plan number HE092631/0/A197/02/05A of the street plans.	To alignment and level to accommodate the new Fulbeck Lane Bridge.

SCHEDULE 8

Article 16

ACCESS TO WORKS

PART 1

PUBLIC ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Northumberland	Footway and cycle track east from St. Leonard’s Lane – shown on plan number HE092631/0/A197/02/02B of the street plans reference A.
	New access east from St. Leonard’s Lane – shown on plan number HE092631/0/A197/02/02B of the street plans reference B.
	Footpath north of public footpath No. 13 – shown on plan number HE092631/0/A197/02/02B of the street plans reference D.
	New accesses from A192 at Northgate roundabout shown on plan number HE092631/0/A197/02/03A of the street plans.
	Footway and cycle track east and west off U6010 shown on plan number HE092631/0/A197/02/05A of the street plans.
	Footpath west of public footpath No. 9 – shown on plan number HE092631/0/A197/02/06A of the street plans reference F.
	Footpath west of public footpath No. 9 – shown on plan number HE092631/0/A197/02/06A of the street plans reference G.
	New access west from A197 at Whorral Bank roundabout shown on plan number HE092631/0/A197/02/07A of the street plans.

PART 2

PRIVATE ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
County of Northumberland	New private means of access – shown on plan number HE092631/0/A197/02/02B of the street plans reference 1.
	New private means of access – shown on plan number HE092631/0/A197/02/02B of the street plans reference 2.
	New private means of access – shown on plan number HE092631/0/A197/02/03A of the street plans reference 5.
	New private means of access – shown on plan number HE092631/0/A197/02/03A of the street plans reference 6.
	New private means of access – shown on plan number HE092631/0/A197/02/03A of the street plans reference 7.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
	New private means of access – shown on plan number HE092631/0/A197/02/05A of the street plans reference 8.
	New private means of access – shown on plan number HE092631/0/A197/02/05A of the street plans reference 9.
	New private means of access – shown on plan number HE092631/0/A197/02/05A of the street plans reference 10.
	New private means of access – shown on plan number HE092631/0/A197/02/05A of the street plans reference 11.
	New private means of access – shown on plan number HE092631/0/A197/02/06A of the street plans reference 12.
	New private means of access – shown on plan number HE092631/0/A197/02/06A of the street plans reference 13.
	New private means of access – shown on plan number HE092631/0/A197/02/06A of the street plans reference 14.
	New private means of access – shown on plan number HE092631/0/A197/02/06A of the street plans reference 15.
	New private means of access – shown on plan number HE092631/0/A197/02/07A of the street plans reference 16.
	New private means of access – shown on plan number HE092631/0/A197/02/07A of the street plans reference 17.
	New private means of access – shown on plan number HE092631/0/A197/02/07A of the street plans reference 18.
	New private means of access – shown on plan number HE092631/0/A197/02/07A of the street plans reference 19.
	Temporary access off A192 to site compound and haul road during construction works shown on plan number HE092631/0/A197/02/03A of the street plans.
	Temporary access off A197 at Whorral Bank roundabout to site compound and haul road during construction works shown on plan number HE092631/0/A197/02/07A of the street plans.

SCHEDULE 9

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Location	<i>(2)</i> Number of land shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised development
County of Northumberland	Plots 2a, 10c, 10k, 15e and 19a	Contractors' storage area for topsoil and other materials.	All works.
	Plot 2b	Contractors' temporary access to the works.	West of A1 at Fairmoor.
	Plot 6b	Contractors' temporary working area.	Footpath diversion Lancaster Park to St. Leonard's underpass.
	Plot 7b	Contractors' storage area for topsoil and other materials.	All works.
	Plots 8b and 19b	Areas for siting and use for contractors' site compounds.	West Lane End Farm and Pegswood Moor Farm.
	Plot 12a	Contractors' temporary working area.	Fulbeck Lane.
	Plot 15f	Construction and use of haul road.	All works.
	Plot 17a	Construction and use of haul road and storage of topsoil and other materials.	All works.

SCHEDULE 10

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which right over land may be acquired</i>
County of Northumberland	Plot 1a	The right of access to construct, keep and maintain, and rights for working spaces in relation to, works to highway drainage outfall, including open ditch storage pond and headwall, into Benridge Burn.
	Plot 6a	The right to construct, keep and maintain, and rights for working spaces in relation to, works to create a public footpath to divert existing public footpath No. 13 from Lancaster Park to St. Leonard's underpass.
	Plot 10f	The right to construct, keep and maintain, and rights for working spaces in relation to, works for water drainage and storage ponds south of the new bridge over Cotting Burn.
	Plots 10g, 10h, 10i	The right to keep and maintain, and rights for working spaces in relation to, existing NWL water main west of Fulbeck Lane.
	Plot 10j	The right to keep and maintain, and rights for working spaces in relation to, existing drainage gully west of Fulbeck Lane.
	Plots 15b and 15c	The right to construct keep and maintain, and rights for working spaces in relation to, water drainage and storage ponds east of Fulbeck Lane and south of proposed road.
	Plot 15d	The right to keep and maintain, and rights for working spaces in relation to, existing drainage gully north of proposed road.
	Plot 18a	The right to construct, keep and maintain, and rights for working spaces in relation to, pond storage areas and landscaping at Pegswood Moor.

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land, subject to the modifications set out in this Schedule.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1)(b) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over or a restrictive covenant affecting land consisting of a house, building or manufactory can be taken or imposed without material detriment or damage to the house, building or manufactory; or
- (b) a right over or a restrictive covenant affecting land consisting of a park or garden belonging to a house can be taken or imposed without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right or imposition of the restrictive covenant but also the use to be made of the right or restrictive covenant proposed to be acquired or imposed, and, in a case where the right or restrictive covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read

(a) 1973 c. 26.

(b) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired or restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable or over which the restrictive covenant is or is to be imposed.

(2) Without limitation to the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right, or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of the severing of the land from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right or restrictive covenant over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015(a) (“the Order”), in relation to that person, ceases to authorise the purchase of the right or imposition of the restrictive covenant and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the

(a) S.I. 2015/23

notice to treat in consequence of which the determination was made; but nothing in this subsection limits any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11(a) of the 1965 Act (powers of entry) is to be modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired and enjoy the benefit of the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Northumberland County Council (referred to in this Order as the undertaker) to construct a new single carriageway road starting at the A197 (Whorral Bank roundabout) and ending at the western end of the A1 – South East Northumberland (Morpeth Northern Bypass) at C148 (St. Leonard’s Lane) including an all movements grade separated junction connecting to the A1 Trunk road and carry out all associated works. The Order permits the undertaker to acquire compulsorily or by agreement land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 35 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Northumberland County Council, County Hall, Morpeth, Northumberland, NE61 2EF.

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