
STATUTORY INSTRUMENTS

2022 No. 853

The Sizewell C (Nuclear Generating Station) Order 2022

PART 2

PRINCIPAL POWERS

Development consent etc granted by Order

3. Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

Limits of deviation

4.—(1) Subject to paragraph (2) in constructing Work No. 1, Work No. 2, Work No. 3, Work No. 4, Work No. 5, Work No. 6, Work No. 7, Work No. 9, Work No. 10, Work No. 13, Work No. 14, Work No. 15, Work No. 16, Work No. 17 and Work No. 18 the undertaker may not deviate vertically or laterally from the levels shown or noted on the Approved Plans except as approved pursuant to Schedule 2 (requirements).

(2) In constructing any ancillary structures, the undertaker may deviate vertically and laterally to the extent authorised by requirement 22.

(3) In constructing Work No. 11 and Work No. 12, the undertaker may deviate.

- (a) Vertically from the levels shown or noted on the Approved Plans to a maximum of 1 metre upwards or 1 metre downwards; and
- (b) laterally to the extent shown or noted on the Approved Plans or as otherwise approved pursuant to Schedule 2 (Requirements).

Effect of the Order on the Sizewell B relocated facilities permissions

5.—(1) If the undertaker serves a notice on East Suffolk Council that it intends to commence Work No. 1D or Work No. 1E—

- (a) the undertaker must cease to carry out development under the Sizewell B relocated facilities permission 1, Sizewell B relocated facilities permission 2 and any new Sizewell B relocated facilities permission; and
- (b) the conditions of the Sizewell B relocated facilities permission 1, Sizewell B relocated facilities permission 2 and any new Sizewell B relocated facilities permission will be unenforceable, except in respect of any breach that occurred prior to the undertaker serving notice under this paragraph.

(2) The undertaker must not carry out Work No. 1D or Work No. 1E under this Order until notice has been served under paragraph (1) but nothing in this Order shall prevent the undertaker from commencing Work No. 1E following commencement of Work No. 1D provided that notice is served on East Suffolk Council to that effect.

(3) Where the undertaker serves notice on East Suffolk Council that it is commencing Work No. 1E it shall not thereafter carry out Work No. 1D and, in the event that the undertaker has commenced Work No. 1D(d) or (e), the undertaker may not implement Work No. 1E(d).

(4) Notwithstanding paragraph (2), the undertaker may exercise any other powers under this Order in respect of any part of the authorised development prior to or following service of notice under paragraph (1).

(5) Without prejudice to the generality of paragraph (4), the undertaker may discharge any requirement in Schedule 2 of this Order at any time prior to or following the service of notice under paragraph (1).

(6) Where details, plans, works or any other matters have been approved or agreed by East Suffolk Council pursuant to a condition of the Sizewell B relocated facilities permission 1 in column (1) of Schedule 8 Part 1 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) prior to the date on which the undertaker serves notice under paragraph (1) the corresponding requirement to that condition in column (2) of Schedule 8 Part 1 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) will be deemed to have been approved insofar as it relates to Work No. 1D.

(7) Where details, plans works or any other matters have been approved or agreed by East Suffolk Council pursuant to a condition of the Sizewell B relocated facilities permission 2 in column (1) of Schedule 8 Part 2 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) prior to the date on which the undertaker serves notice under paragraph (1) the corresponding requirement to that condition in column (2) of Schedule 8 Part 2 (deemed approval of requirements relating to Sizewell B relocated facilities permission 1 and 2) will be deemed to have been approved insofar as it relates to Work No. 1E

(8) Where details, plans, (except for those plans which are also Approved Plans relating to Work No. 1D or Work No. 1E) works or any other matters have been imposed as a condition, or approved or agreed pursuant to a condition, of any new Sizewell B relocated facilities permission prior to the date on which the undertaker serves notice under paragraph (1), East Suffolk Council and the undertaker will agree in writing which details, documents, plans, works or other matters under the new Sizewell B relocated facilities permission will be deemed to have been discharged, approved, agreed, obtained or undertaken for the purposes of the requirement relating to Work No. 1D or Work No. 1E (as the case may be).

Maintenance of authorised development

6. 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.

Authorisation of use

7.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any duty to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

Benefit of Order

8.—(1) Subject to article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of NNB Generation Company (SZC) Limited save for—

- (a) the Sizewell B relocation works 1 and the Sizewell B relocation works 2, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and EDF Energy Nuclear Generation Limited;
- (b) in respect of any rail works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and Network Rail; and
- (c) in respect of any grid works, for which the provisions of this Order have effect for the benefit of NNB Generation Company (SZC) Limited and National Grid.

(2) Paragraph (1) 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.

(3) For the purpose of exercising the power to carry out operations under paragraph (2)(a) of article 10 (enforcement of the Deed of Obligation), East Suffolk Council and Suffolk County Council will be deemed to have the benefit of the Order.

Consent to transfer benefit of the Order

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

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related 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 between the undertaker and the lessee.

(2) The main platform works may not be operated or used except by a person with the benefit of the Order.

(3) The Secretary of State must consult the Marine Management Organisation, East Suffolk Council and Suffolk County Council before giving consent under paragraph (1).

(4) Where the undertaker seeks to transfer the benefit of some but not all of the Order powers, the Secretary of State shall take into account whether such partial transfer can take place without prejudicing—

- (a) delivery of the authorised development as a whole;
- (b) the ability of the person bound by the Deed of Obligation following such transfer to meet all obligations contained therein;
- (c) the ability of East Suffolk Council and Suffolk County Council to enforce the terms of the Deed of Obligation.

(5) Where a transfer or grant has been made in accordance with this article, references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

(6) Where the undertaker has transferred any benefit (“transferor”), or for the duration of any period during which the undertaker has granted any benefit (“grantor”), under paragraph (1) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant, is subject to the same restrictions, liabilities and obligations under this Order as would apply if those benefits or rights were exercised by the transferor or grantor.

(7) The obligations of the undertaker under the Deed of Obligation are enforceable in accordance with article 10 (Enforcement of the Deed of Obligation) against any person to whom the power to construct or operate the main platform work has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of those works, and such transferee or lessee shall be treated for all purposes as the undertaker who entered into the Deed of Obligation with the other parties to it.

(8) The obligations of parties to the Deed of Obligation other than the undertaker are enforceable by any person to whom the power to construct or operate the main platform works has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of those works, and such parties shall be treated for all purposes as parties who entered into the Deed of Obligation with the transferee or lessee.

Enforcement of the Deed of Obligation

10.—(1) The terms of the Deed of Obligation are enforceable by injunction.

(2) Without prejudice to paragraph (1), if there is a breach of a requirement in the Deed of Obligation to carry out any operations in, on, under or over the land to which the requirement relates, East Suffolk Council or Suffolk County Council may—

- (a) enter the land and carry out the operations, and
- (b) recover from the undertaker any expenses reasonably incurred by them in so doing.

(3) Before exercising their power under paragraph 2(a) East Suffolk Council or Suffolk County Council shall give not less than twenty-one days' notice of their intention to do so to any owner or occupier of the land.

(4) Following receipt of the notice given in accordance with paragraph (3) in relation to land in its possession, the undertaker shall not refuse or hinder entry to such land by East Suffolk Council or Suffolk County Council provided that such entry is in accordance with any reasonable requirements of the undertaker.

(5) If entry to the land by East Suffolk Council or Suffolk County Council is refused or hindered by the undertaker, the owner or occupier, they may issue a warrant to—

- (a) the sheriff, or
- (b) the enforcement officer,

to allow entry to it by the person appointed in the warrant to receive it.

(6) On receipt of the warrant the person to whom it is issued shall allow entry to the land accordingly.

(7) If, by virtue of paragraph 3A of Schedule 7 to the Courts Act 2003, the warrant is issued to two or more persons collectively, the duty in paragraph 5 of Schedule 7 to the Courts Act 2003 shall apply to the person to whom the warrant is allocated in accordance with the approved arrangements mentioned in that Schedule.

(8) The Deed of Obligation shall be a local land charge in respect of all freehold or leasehold interests in land owned by the undertaker within the Order limits and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

(9) In this article—

“undertaker” means the undertaker authorised to construct or operate the main platform works, being the undertaker bound by the Deed of Obligation;

“the enforcement officer”, in relation to a warrant to under this article, means the officer or officers identified for that purpose in paragraph 3A of Schedule 7 to the Courts Act 2003; and

“sheriff” includes an under sheriff or other legally competent deputy, and means the sheriff for the area where the land is situated, or if land in one ownership is not situated wholly in one such area the sheriff for the area where any part of the land is situated.

Modification and discharge of Deed of Obligation

11.—(1) An obligation in the Deed of Obligation may not be modified or discharged except—

(a) by agreement between the undertaker and the beneficiary of the obligation, executed as a deed; or

(b) further to a determination by the Secretary of State under this article.

(2) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was first entered into, apply to the Secretary of State for the obligation—

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged,

and must notify East Suffolk Council, Suffolk County Council and the Environment Agency as soon as any such application is made.

(3) An application under paragraph (2), for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.

(4) Where an application is made to the Secretary of State under paragraph (2), the Secretary of State must consult East Suffolk Council, Suffolk County Council and the Environment Agency and, taking into account their responses, may determine—

(a) that the obligation shall continue to have effect without modification;

(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications,

and shall give notice of their determination to the applicant, East Suffolk Council, Suffolk County Council and the Environment Agency within three months of the application and provide full reasons for the decision.

(5) Where the Secretary of State determines under this article that an obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant, East Suffolk Council, Suffolk County Council and the Environment Agency or such other date as the Secretary of State may determine.

(6) An application to the Secretary of State under paragraph (2) shall include the following information—

(a) the name and address of the undertaker;

(b) sufficient information to enable identification of the obligation which the undertaker wishes to have modified or discharged;

(c) the undertaker's reasons for applying for the modification or discharge of that obligation; and

(d) such other information as the Secretary of State considers necessary to enable them to determine the application.

(7) When the Secretary of State receives an application for the modification or discharge of an obligation under paragraph (2) the undertaker shall arrange for the application to be publicised by—

(a) posting notice of the application on or near the land to which the obligation relates for not less than 21 days; or

(b) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated and on the undertaker's website.

(8) The notice referred to in paragraph (6) must include the name of the undertaker, details of the obligation that is proposed to be modified or discharged, an address or website where members of

the public may inspect copies of the application, the address or email address to which any person who wishes to make a representations may write, and a date (no later than 21 days beginning on the date that the notice is posted or published) by which such representations should be made to the Secretary of State.

(9) Where it is proposed that East Suffolk Council, Suffolk County Council or the Environment Agency is not to be a party to any deed entered into under paragraph (1)(a), the body not proposed to be a party must be provided with the information set out in paragraphs (6)(a) to (c), and be given not less than 21 days to make representations.

(10) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation in the Deed of Obligation.

(11) In this article “undertaker” means the undertaker authorised to construct or operate the main platform works, being the undertaker bound by the Deed of Obligation.

Defence to proceedings in respect of statutory nuisance

12.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (Summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within sub-paragraphs (d), (fb), (g) or (ga) of section 79(1) of that Act (statutory nuisances and inspections thereof) no order may be made, and no fine may be imposed, under section 82(2) 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, maintenance or operation of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with—
 - (i) a notice served under section 60 (control of noise on construction site);
 - (ii) a consent given under section 61 (prior consent for work on construction site); or
 - (iii) the controls and measures relating to noise, vibration, dust or lighting as described in the Construction Method Statement, Code of Construction Practice, Lighting Management Plan, Main Development Site Design and Access Statement, Associated Development Design Principles and Outline Landscape and Ecology Management Plan or in accordance with noise and lighting levels set out in an environmental permit relating to the construction, maintenance or operation of the authorised development; or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and that it cannot, to the reasonable satisfaction of East Suffolk Council reasonably be avoided.

(2) Sections 61(9) of the Control of Pollution Act 1974⁽²⁾ (consent for work on construction sites) as it relates to proceedings under section 82 of the Environmental Protection Act 1990 (Summary proceedings by persons aggrieved by statutory nuisance) does 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.

(3) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990.

(1) 1990 c. 43. Section 79(1)(fb) was inserted by section 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are amendments to this Act which are not relevant to this Order.

(2) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43), and paragraph 1 of Schedule 24 to the Environment Act 1995 c. 25. Section 61(2) was amended by section 133 of and Schedule 7 to the Building Act 1984 (c. 55). There are other amendments to the 1974 Act which are not relevant to the Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
