
STATUTORY INSTRUMENTS

2023 No. 923

The A38 Derby Junctions Development Consent Order 2023

PART 5

POWERS OF ACQUISITION

Temporary use of land for maintaining the authorised development

34.—(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 upon 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;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) 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 upon 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 explaining the purpose for which entry is to be taken.

(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 restore the land to the condition and level it was in on the date on which possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land.

(6) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(7) 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 powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(9) 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

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enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) 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.

(12) 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.