
STATUTORY INSTRUMENTS

2023 No. 923

The A38 Derby Junctions Development Consent Order 2023

PART 6

OPERATIONS

Felling or lopping of trees and removal of hedgerows

39.—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits 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—

- (a) do no unnecessary damage to any tree or shrub;
- (b) pay compensation to any person for any loss or damage arising from such activity; and
- (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981⁽¹⁾ and the Conservation of Habitats and Species Regulations 2017⁽²⁾ or any successor acts and regulations.

(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 as if it were a dispute under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits and as shown on the hedgerows plans that is required to be removed.

(5) In this article—

“hedgerow” includes a hedgerow to which the Hedgerows Regulations 1997⁽³⁾ apply and includes important hedgerows;

“the hedgerows plans” means the plans certified by the Secretary of State as the hedgerows plans for the purposes of this Order.

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of

(1) 1981 c. 69.

(2) S.I. 2017/1012.

(3) S.I.1997/1160.

that Schedule, if the undertaker 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)—
- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
 - (b) the duty contained in section 206(1)(4) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
 - (c) the undertaker must consult the relevant planning authority prior to that activity taking place.
- (3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(4) Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to the 2008 Act.