

SCHEDULE 8

PROTECTIVE PROVISIONS

PART 2

FOR PROTECTION OF BALMORAL HOTEL AND PRINCES MALL

1.—(1) For the protection of the protected landowners the provisions of this Part of this Schedule shall have effect except in so far as otherwise agreed in writing between Network Rail and a protected landowner.

(2) This Part of this Schedule is additional to any servitude or other right or any obligation which Network Rail may acquire from a protected landowner under article 14, 15, 16 or 17, and nothing in this Part of this Schedule prejudices the exercise of, or enjoyment of the benefit from, any such servitude, right or obligation.

Interpretation

2. In this Part of this Schedule—

“building regulations” means regulations made under section 1 of the Building (Scotland) Act 2003⁽¹⁾;

“CEC” means City of Edinburgh Council;

“damage” in the context of damage to protected property, means deterioration in the fabric or decoration of the protected property which is wholly or to a significant extent attributable to the construction or maintenance of a specified work;

“the fire escape” means the existing fire escape from the Balmoral Hotel to Waverley Steps, the approximate position of which is shown on sheet no. 1 of the Order plans marked “BH1”;

“notice” means notice in writing;

“plans” includes sections, drawings, specifications and method statements;

“portal PM1” and “portal PM2” mean respectively the existing portals in the east wall of Princes Mall providing access points between Princes Mall and Waverley Steps, the approximate positions of which are shown on sheet no. 1 of the Order plans marked “PM1” and “PM2”;

“portal PM3” means the portal to be provided in the east wall of Princes Mall as an access point between Princes Mall and Waverley Steps, the approximate position of which is shown on sheet no. 1 of the Order plans marked “PM3”;

“the portals” means portal PM1 and, prior to the provision of portal PM3, portal PM2, and thereafter means portal PM1 and portal PM3;

“PPG” means PPG Metro 39 Limited (company no. SC265768) whose registered office is at 9 Charlotte Square, Edinburgh EH2 4DR and its successors in title as head lessees of Princes Mall;

“protected landowner” means—

- (a) each of RFF, CEC and PPG in relation to Work No. 1; and
- (b) each of CEC and PPG in relation to—
 - (i) Works Nos. 2 and 3; and

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(ii) portal PM3,

in the case of CEC, in its capacity as owner of the protected property;

“protected property” means the Balmoral Hotel or Princes Mall, as the case may be;

“protected property work” means any work (whether or not it is a work to which building regulations apply) which is carried out on the protected property and which affects the structure of the west wall of the Balmoral Hotel, the basements at the west end of the Balmoral Hotel, the east wall or the south wall of Princes Mall or the roof of Princes Mall;

“RFF” means Rocco Forte & Family Plc (company no. 3277921) whose registered office is at 70 Jermyn Street, London, SW1Y 6NY and its successors in title as owners of the Balmoral Hotel;

“specification of design details” means one or more documents which are so designated by Network Rail as providing details of the design and construction of any direct interface between a specified work and the protected property;

“specified work” means, in the case of RFF, Work No. 1 and, in the case of CEC and PPG, Works Nos. 1, 2 and 3 and portal PM3;

“the staff access doorway” means the existing staff access doorway in the west wall of the Balmoral Hotel providing an access point for staff between Waverley Steps and the Balmoral Hotel, the approximate position of which is shown on sheet no. 1 of the Order plans marked “BH2”; and

“Waverley Steps” includes, where the context so requires, the steps and escalators comprised in Work No. 1;

references to the use of the fire escape by RFF and the use of the portals as a fire escape include such use by, respectively RFF, CEC and PPG and their respective employees, agents and invitees; and

references to rights of access granted to CEC and PPG in respect of the use of the portals other than as fire escapes are to rights exercisable by CEC, PPG, their respective employees and agents, by the tenants and occupiers of and visitors to Princes Mall and by the invitees of CEC, PPG or such tenants and occupiers.

Approval of specification of design details – specified works

3.—(1) Before beginning to construct any specified work except portal PM3, Network Rail shall supply to the protected landowner a specification of design details together (by way of information) with plans of the work and such further particulars available to it as the protected landowner may within 14 days of the supply of the specification of design details, reasonably require.

(2) Any such specified work shall not be constructed except in accordance with the specification of design details as approved in writing by the protected landowner or settled in accordance with paragraph 15 and, where applicable, in accordance with any requirements specified under paragraph 3(3)(c).

(3) Any approval of a protected landowner required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 56 days of the supply of the specification of design details for approval in writing and, in the case of a refusal, accompanied by a statement of the grounds of refusal;
- (c) may be given subject to such reasonable requirements as the protected landowner may impose for the protection of the protected property.

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Notice of specified works

4.—(1) Network Rail shall give to the protected landowner not less than 14 days' notice of its intention to commence construction of any specified work, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable, and notice of its completion not later than 7 days after the date on which it is brought into use.

(2) A protected landowner shall be entitled by its officer to watch and inspect the construction of any specified work.

Access to specified works: provision of information

5. Network Rail, on being given reasonable notice, shall—

- (a) at all times allow reasonable facilities to a protected landowner for access to a specified work during its construction for the purposes of assessing the effect of the specified work on the protected property; and
- (b) supply the protected landowner with such information as the protected landowner may reasonably require with regard to a specified work or the method of constructing it.

Alterations to protected property

6.—(1) If during the construction of a specified work, or during a period of 24 months after the completion of a specified work—

- (a) any alterations or additions to a protected property, either permanent or temporary, are reasonably necessary in consequence of the construction of the specified work in order to avoid damage to the protected property; and
- (b) the protected landowner gives to Network Rail reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice),

Network Rail shall pay to the protected landowner the reasonable cost of those alterations or additions.

(2) Any sum payable under this paragraph shall include, in respect of any alterations and additions that are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected landowner in maintaining, and, when necessary, renewing any such alterations or additions.

Maintenance of works

7. If at any time after the completion of a specified work other than Work No. 2 a protected landowner gives notice to Network Rail that the state of maintenance of the work appears to be such that the work is causing or is likely to cause damage to the protected property, Network Rail shall, as soon as reasonably practicable after receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such damage.

Repayment of fees, etc.

8. Network Rail shall repay to a protected landowner all reasonable fees, costs, charges and expenses (including payments to contractors undertaking the construction of portal PM3) reasonably and properly incurred by the protected landowner—

- (a) in approving any specification of design details supplied in accordance with paragraph 3;
- (b) in agreeing the proposals for portal PM3 under paragraph 13;

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- (c) in inspecting the construction of any specified work, monitoring the effects of construction on the protected property or analysing information supplied under paragraph 5(b);
- (d) in constructing portal PM3; and
- (e) in connection with any alterations or additions the cost of which is payable by Network Rail under paragraph 6.

Conduct of protected property works

9. Paragraphs 3 to 8 shall apply to the carrying out by a protected landowner of any protected property work as if—

- (a) “Network Rail” referred to a protected landowner;
- (b) “protected landowner” referred to Network Rail;
- (c) “specified work” referred to protected property work; and
- (d) “protected property” meant the authorised works other than Work No. 2.

Access through fire escapes

10.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (3), and subject to paragraph 13, Network Rail shall so far as reasonably practicable, provide access to and from Waverley Steps and over Waverley Steps to Princess Street for the purpose of escape from fire—

- (a) to RFF from the fire escape; and
- (b) to CEC and PPG from the portals.

(2) Subject (in relation to CEC and PPG) to paragraph 13, in constructing Work No. 1 Network Rail shall provide a means of access to Waverley Steps and Princes Street from the fire escape and the portals for the purposes of this paragraph.

(3) Subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall grant RFF, CEC and PPG such rights of access on to Waverley Steps and rights of way over Waverley Steps as may be necessary to enable RFF to use the fire escape and CEC and PPG to use the portals as fire escapes, in both cases at all times.

(4) Rights granted pursuant to this paragraph may be subject to such conditions as Network Rail may require for the purposes of protecting its property or its railway undertaking, including conditions obliging RFF, CEC and PPG to reimburse the cost to Network Rail of providing a means of access to Waverley Steps, or from Waverley Steps to Princes Street, that is secured at times when access over Waverley Steps is not available to the general public.

Access through the staff access doorway and the portals

11.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (3), and subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall so far as reasonably practicable, provide access to and from Waverley Steps and over Waverley Steps to Princes Street—

- (a) to RFF from the staff access doorway; and
- (b) to CEC and PPG from the portals.

(2) Subject (in relation to CEC and PPG) to paragraph 13, in constructing Work No. 1 Network Rail shall provide means of access to Waverley Steps from the staff access doorway and the portals for the purposes of this paragraph.

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(3) Subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall grant RFF, CEC and PPG respectively rights of access through the staff access doorway and the portals to and from Waverley Steps, such rights to be exercisable at all times when access over Waverley Steps is available to the general public.

(4) Rights granted pursuant to this paragraph may be subject to such conditions as Network Rail may require for the purposes of protecting its property or its railway undertaking, including conditions obliging RFF, CEC and PPG to close and secure the staff access doorway and the portals at times when access over Waverley Steps is not available to the general public.

Access to retail units

12.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (2), Network Rail shall so far as reasonably practicable, permit RFF, its servants and agents and its tenants of shops 2 to 4, 3 and 5 Waverley Steps access over Waverley Steps for pedestrian traffic only to those shops at all times when access over Waverley Steps is available to the general public.

(2) Network Rail shall grant RFF a servitude right of access over Waverley Steps for pedestrian traffic only to shops 2 to 4, 3 and 5 Waverley Steps, such right to be exercisable at all times when access over Waverley Steps is available to the general public.

Provision of portal PM3

13.—(1) Network Rail shall, not later than the date on which it complies with paragraph 3 in relation to CEC and PPG, provide the protected landowner with its proposals for the construction of portal PM3 (“the proposals”), including plans and such further particulars available to it as the protected landowner may within 14 days of the supply of the specification of design details, reasonably require.

(2) The protected landowner shall within 21 days of the receipt of the proposals or the provision of further particulars, whichever is later, notify Network Rail as to whether it agrees the proposals.

(3) The parties shall endeavour to agree the proposals, including arrangements for construction to be carried out by either of them and the conditions and programming of construction.

(4) Network Rail may specify a date by which such agreement must be reached (being a date reasonably required so as to enable Network Rail to adhere to its programme for the construction of the authorised works), and if the parties fail to reach agreement by that date the proposals shall be deemed to be withdrawn.

(5) On the deemed withdrawal of the proposals Network Rail shall cease to be under any obligation to the protected landowner—

(a) to provide portal PM3; or

(b) to provide means of access for any purpose to or from Waverley Steps through portal PM2.

14. Any notice given under this Part of this Schedule shall be in writing and may be served in any of the ways provided by section 20 of the 2007 Act.

Dispute resolution

15. Any difference arising between Network Rail and any of RFF, CEC or PPG under this Part of this Schedule (other than a difference as to its meaning or construction or relating to portal PM3) shall be determined by arbitration.

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