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STATUTORY INSTRUMENTS

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**2002 No. 412**

**The Chester Guided Busway Order 2002**

**PART II**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

4.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 5, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (6), the Council may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised guided busway;
- (c) works for the alteration or demolition of any building or structure;
- (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (e) works to alter the position of any street furniture or apparatus including mains, sewers, drains and cables; and
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works, including works for the re-siting or protection of any footpath or cycle route which may (upon construction of the authorised works) have been constructed along the course of the former Mickle Trafford to Shotton railway, and other works for the benefit or protection of premises affected by the authorised works.

(4) Subject to paragraph (6), the Council may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) Where the Council lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised works or associated traffic control, it may provide in, or in connection with, such conduits accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

(6) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works within the limits of land to be acquired.

### **Power to deviate**

5. In constructing or maintaining any scheduled work, the Council may—
- (a) except in relation to Work No. 1B, deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work;
  - (b) in relation to Work No. 1B, construct the works within the limits of widening for that work; and
  - (c) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards.

### *Streets*

### **Power to alter layout of streets**

6.—(1) The Council may alter the layout of any street in the City of Chester specified in column (1) of Schedule 3 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the powers conferred by article 4 or paragraph (1) but subject to paragraph (3), the Council may for the purpose of constructing, maintaining or using the authorised guided busway alter the layout of any street within the limits of land to be acquired; and, without prejudice to the generality of the foregoing, the Council may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for buses or by carrying out other works; and
- (d) carry out works for the provision or alteration of parking places and bus lay-bys.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

### **Power to keep apparatus in streets**

7.—(1) The Council may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, place and maintain in any street within the limits of land to be acquired any work, equipment or apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the 1991 Act, and
- (b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

### **Power to execute street works**

8. The Council may, for the purpose of exercising the powers conferred by article 7 and the other provisions of this Order, enter upon any street within the limits of land to be acquired and execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

### **Temporary stopping up of streets**

**9.—(1)** The Council may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street, and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Council shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(4) In relation to any stopping up, alteration or diversion of a street by the Council under the powers conferred by this article, the provisions of the 1991 Act mentioned in paragraph (5), and any regulations made, or code of practice issued or approved under those provisions, shall apply (with the necessary modifications) where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

### **Maintenance of altered streets**

**10.—(1)** Where a street is altered under this Order, the altered part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(3) Nothing in this article shall have effect in relation to the street works as respects which the provisions of Part III of the 1991 Act apply.

### **Agreements with street authorities**

**11.—(1)** A street authority and the Council may enter into agreements with respect to—

- (a) any stopping up, alteration or diversion of a street under the powers conferred by this Order; and
- (b) the execution in the street of any of the works referred to in article 8.

(2) Such an agreement may, without prejudice to the generality 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; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### *Supplemental powers*

#### **Discharge of water**

**12.—**(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may on any land within the limits of land to be acquired lay down, take up and alter pipes and make openings into, and connections with, the watercourse, sewer or drain.

(2) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall take such steps as are reasonably practicable to secure that any water discharged under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(5) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991<sup>(1)</sup>.

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Power to survey and investigate land**

**13.—**(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the limits of land to be acquired;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land described in sub-paragraph (a) (in this particular article referred to as “the land”) to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on the land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of the land and making of trial holes under sub-paragraphs (a) to (c); and

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(1) 1991 c. 57.

- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 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 Council—
  - (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The Council shall make compensation for any damage occasioned by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(2).

#### **Planning permission : supplementary matters**

14.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(3) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(4), or as incorporated in any tree preservation order), any direction under section 90(2A) of the Town and Country Planning Act 1990(5) deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(6) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the Town and Country Planning Act 1990 deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990 to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

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(2) 1961 c. 33.  
(3) S.I. 1969/17.  
(4) S.I. 1975/148.  
(5) 1990 c. 8.  
(6) S.I. 1999/1892.