
STATUTORY INSTRUMENTS

2020 No. 746

**The A19 Downhill Lane Junction
Development Consent Order 2020**

PART 7

MISCELLANEOUS AND GENERAL

Disapplication of legislative provisions, etc.

36.—(1) Upon commencement of the authorised development, the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(1) is amended in accordance with Schedule 8 (amendments to the A19/A184 Testo’s Junction Alteration Development Consent Order 2018), where—

- (a) column 1 sets out where the amendment is to be made;
- (b) column 2 sets out how the amendment is to be made; and
- (c) column 3 sets out the text to be substituted, inserted or omitted.

(2) The provisions of the Neighbourhood Planning Act 2017(2), insofar as they relate to temporary possession of land under article 29 (temporary use of land for carrying out the authorised development), article 30 (temporary use of land for construction compound), and article 31 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 31(11), any maintenance of any part of the authorised development.

Application of landlord and tenant law

37.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(1) S.I. 2018/994.
(2) 2017 c. 20.

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

39.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽³⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)⁽⁴⁾ of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974⁽⁵⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 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.

Protection of interests

40. Schedule 7 (protective provisions) has effect.

⁽³⁾ 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

⁽⁴⁾ Subsection (2) of section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

⁽⁵⁾ 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

Certification of documents, etc.

41.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 9 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 9 requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) As soon as practicable after the commencement of the authorised development, the undertaker must submit copies of the Testo’s plans to the Secretary of State for certification as true copies of those plans and documents for the purposes of the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(6).

Service of notices

42.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(7) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(6) S.I. 2018/994.
(7) 1978 c. 30.

- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

43. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Lands Chamber of the Upper Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.