
STATUTORY INSTRUMENTS

2024 No. 60

The A12 Chelmsford to A120 Widening
Development Consent Order 2024

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

48.—(1) This article applies to—

- (a) any agreement for lease 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—

- (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

49. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (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

50.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(1) in relation to a nuisance falling within paragraph (g) of section 79(1) noise emitted from premises so as to be

(1) 1990 c. 43.

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)(2) 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(3); 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)(4) 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.

Removal of human remains

51.—(1) In this article, “the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice for two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person is to, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(2) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40).

(3) 1974 c. 40. Section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43).

(4) Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990.

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which are to be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (14) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(16) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(5) does not apply to a removal carried out in accordance with this article.

Crown Rights

52.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Use of private roads for construction

53.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Disapplication of local legislation

54.—(1) The provisions of the Chelmer and Blackwater Navigation Act 1793—

- (a) do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development; and
- (b) are subject to—
 - (i) any acquisition of new rights and covenants under article 30 (compulsory acquisition of new rights and imposition of restrictive covenants);
 - (ii) the exercise of temporary powers over land included in article 40 (temporary use of land for carrying out the authorised development), or article 41 (temporary use of land for maintaining the authorised development).

(2) In this article “the Chelmer and Blackwater Navigation Act 1793” means the Public Act, 33 George III, C.93, entitled “An Act for making and maintaining a Navigable Communication between the Town of Chelmsford, or some Part of the Parish of Springfield in the County of Essex, and a Place called Collier’s Reach, in or near the River Blackwater, in the said County”.

Disapplication and modification of byelaws

55.—(1) The byelaws specified in column (1) of Schedule 10 (disapplication and modification of byelaws) are, to the extent specified in column (2) of that Schedule modified; or disappplied and do not apply insofar as they are inconsistent with a provision of, or a power conferred by, this Order.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of the power;
- (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded is by this article; and
- (c) the extent of that exclusion.

Use of land between Bury Lane and Station Road, Hatfield Peverel

56.—(1) The undertaker may—

- (a) use the relevant land; and
- (b) authorise the use of the relevant land by any qualifying person,

for the passage on foot or with vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with access to specified land.

(2) Every part of the relevant land is deemed to form part of a road for the purposes of article 23 (traffic regulation).

(3) The undertaker must compensate the person liable for the repair of the land to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(4) Any dispute as to a person’s entitlement to compensation under paragraph (3), or as to the amount of such compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(5) In this article—

the “relevant land” means any part of the land within the plot 5/20a of the Order land as shown on the land plans and described in the book of reference;

“qualifying person” means any person authorised by the undertaker to use the relevant land; and

“specified land” means any land specified by the undertaker as being land to which qualifying persons require access over the relevant land.

Use of consecrated land

57.—(1) Sections 238 (use and development of consecrated land) and 239 (use and development of burial grounds) of the 1990 Act apply—

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement) so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land acquired for the purposes of the authorised development (whether or not by agreement) the temporary use of land pursuant to articles 40 (temporary use of land for constructing the authorised development) or 41 (temporary use of land for maintaining the authorised development) so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order, without prejudice to the status of the land over which the right is exercised as consecrated land.

(2) In section 238(1) of the 1990 Act as applied by paragraph (1), the reference to “planning permission” includes this Order.

(3) In section 240(1) of the 1990 Act, the reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as is applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of article 51 (removal of human remains).

(4) In section 240(3) of the 1990 Act, the reference to “statutory undertakers” includes the undertaker and the reference to “any other enactment” includes this Order.

(5) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(6) do not apply to the authorised development.

Protective provisions

58. Schedule 11 (protective provisions) has effect.

Certification of documents, etc.

59.—(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 12 (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 12 requires an amendment to reflect the terms of the Secretary of State’s decision to make this 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

60.—(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 is to 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;
 - (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 must 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 is final and takes 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 does not exclude the employment of any method of service not expressly provided for by it.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(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

61. 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 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.