
STATUTORY INSTRUMENTS

2022 No. 820

The Northumberland Line Order 2022

PART 5

MISCELLANEOUS AND GENERAL

Planning permission

26. Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the works mentioned in articles 3(b) (power to construct and maintain works) and 11 (means of access) 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 of the purposes of that Act) of that Act.

Power to transfer undertaking

27.—(1) Subject to paragraph (4), the Council may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the Council and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the Council and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the Council, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Council.

(4) The consent of the Secretary of State is not required for a transfer or grant under this article where such transfer or grant is to Network Rail in accordance with an agreement made under article 28 (agreements with Network Rail).

Agreements with Network Rail

28.—(1) The Council and Network Rail may enter into and carry into effect agreements with respect to the development.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but without limitation on the scope of paragraph (1)), provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of the development by the Council or by Network Rail or by the Council and Network Rail jointly;

- (b) for the exercise by Network Rail, or by the Council, or by Network Rail and the Council jointly, of all or any of the powers and rights of Network Rail and the Council (as the case may be) in respect of any part of the development; and
- (c) without limitation on the scope of sub-paragraph (b), for the exercise by Network Rail, or by Network Rail and the Council jointly, of all or any of the powers under this Order for, or relating to, the compulsory acquisition, or the temporary possession or use, of any land or rights over land.

(3) The exercise by the Council or Network Rail or by the Council and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) is subject to all statutory and contractual provisions relating to it as would apply if such powers and rights were exercised by the Council or Network Rail (as the case may be) alone, and accordingly such provisions, with any necessary modifications, apply to the exercise of such powers and rights by the Council or Network Rail or by the Council and Network Rail jointly, as the case may be.

(4) The Council and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the Council, or the Council and Network Rail jointly of—

- (a) any part of the development; or
- (b) any works, lands or other property required for the purposes of the development or in connection with the development,

together with any rights and obligations (whether or not statutory) of Network Rail or the Council relating to them.

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance)(1) of the Environmental Protection Act 1990 in relation to a nuisance falling within section 79(1)(g) or 79(1)(ga) (statutory nuisances and inspections therefor)(2) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Council or Network Rail for or in connection with the construction or maintenance of the development and that the nuisance is attributable to the carrying out of the 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 (3)), of the Control of Pollution Act 1974; or
- (b) that the nuisance is a consequence of the construction, operation or maintenance of the 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 Council or Network Rail for the purposes of or in connection with the construction or maintenance of the development.

(3) In proceedings for an offence under section 80(4) (summary proceedings for statutory nuisances) of the Environmental Protection Act 1990 in respect of a statutory nuisance falling within

(1) 1990 c. 43.

(2) Section 79(1)(ga) was inserted by section 2(2)(b) of the Noise and Statutory Nuisance Act 1993 (c. 40).

(3) 1974 c. 40.

section 79(1)(g) or 79(1)(ga) of that Act where the offence consists of contravening requirements imposed by virtue of section 80(1)(a) or (b)(4) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the development; and
- (b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the development of section 122 (statutory authority as a defence to actions in nuisance, etc.)(5) of the Railways Act 1993 or any rule of common law having similar effect.

Protection of interests

30. Schedule 10 (protective provisions) has effect.

Consents, agreement, certifications and approvals

31.—(1) Where any application is made to a relevant authority under this Order, the consent, agreement, certification or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the Council of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement, certification or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) Where any application is made to a relevant authority and the application includes submissions relating to the discharge of an obligation under Schedule 10 (protective provisions) at the same time, paragraph (2) does not apply to that application.

(5) In this article—

“application” means an application or request for any consent, agreement, certification or approval required or contemplated by articles 3 (power to construct and maintain works), 4 (power to survey and investigate land), 5 (discharge of water), 9 (temporary stopping up and diversion of streets), 10 (creation and maintenance of new highways), 11 (access to works) and 12 (power to execute street works); and

“relevant authority” means a highway authority, a street authority or an owner of a public sewer or drain as defined in article 5(8)(a) (discharge of water).

Amendment of local legislation

32.—(1) The following provisions do not apply to the railway following this Order coming into force where they limit or have the effect of limiting the level of tolls, fares or any other charges that can be levied in connection with the operation and use of the railway—

- (a) sections 51 to 67 of the Blyth and Tyne Railway Consolidation and Extensions Act 1854;
- (b) sections 22 to 23 of the Blyth and Tyne Railway Amendment Act 1857;
- (c) section 24 of the Blyth and Tyne Railway Amendment Act 1861;
- (d) section 11 of the Blyth and Tyne Railway Act 1872; and
- (e) section 6 of the North Eastern Railway Act 1902.

(4) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(5) 1993 c. 43.

(2) In addition to the provisions identified in paragraph (1), any provision of any other enactment of local application relating to the railway, which limits or has the effect of limiting the level of tolls, fares or any other charges that can be levied in connection with the operation and use of the railway, does not apply to the railway following this Order coming into force.

Certification of plans, etc.

33. The Council must, as soon as practicable after the making of this Order, submit copies of the book of reference, the land and works plans and the rights of way plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the land and works plans and the rights of way plans referred to in this Order; and a 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

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) 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)(6) of the Interpretation Act 1978 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 taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(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 any 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.

No double recovery

35. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

36. Any difference under any provision of this Order, unless otherwise provided for, 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.