
STATUTORY INSTRUMENTS

2024 No. 360

**The A66 Northern Trans-Pennine
Development Consent Order 2024**

PART 5

MISCELLANEOUS AND GENERAL

Benefit of the Order

43.—(1) Subject to article 44 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring functions on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

44.—(1) The undertaker may, regardless of any provision in any enactment, with the consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph (1), references in the provisions of this Order and any document certified under it that apply to the undertaker are to be read as references to the transferee or the grantee, or any other person who may exercise, enjoy or be responsible for any functions of the undertaker pursuant to that agreement, as the case may be.

(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 undertaker.

Application of landlord and tenant law

45.—(1) This article applies to any agreement entered into by the undertaker under article 44 (consent to transfer benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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 enactment or rule of law to which paragraph (2) applies is to apply 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 the purposes of the 1990 Act

46. Development consent granted by this Order for development on Order land 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 not being operational land for the purposes of that Act) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

47.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) 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 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 construction or maintenance 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) 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.

Protective provisions

48. Schedule 9 (protective provisions) has effect.

(1) 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.

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

(3) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.

Certification of plans, etc.

49.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents referred to in Schedule 10 (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 referred to in Schedule 10 requires to be amended 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 plan or document of which it is a copy.

(4) The undertaker must, following certification of the plans or documents in accordance with paragraph (1), make those plans or documents available in electronic form for inspection by members of the public.

Service of notices

50.—(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 (6) to (9) 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(4) 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 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;

(4) 1978 c. 30.

- (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.

(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

51. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing 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.

Consents, agreements and approvals

52.—(1) Where any application is made to a relevant authority, the consent, agreement 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 undertaker 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 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) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 9 (construction and maintenance of new, altered or diverted streets and other structures), 11 (temporary prohibition, restriction or regulation of use of streets), 13 (discharge of water), 15 (authority to survey and investigate land) and 42 (traffic regulation measures); and

“relevant authority” means a relevant planning authority, a traffic authority, a highway authority, a street authority or an owner of a public sewer or drain as defined in article 13(7)(a).

Environmental Management Plans

53.—(1) The undertaker must not commence any part of the authorised development until a second iteration EMP for that part accompanied by a summary report has been submitted to and approved in writing by the Secretary of State.

(2) The Secretary of State must consult the Environment Agency, Historic England and Natural England (on matters related to their statutory functions), local authorities and highway authorities on the submitted second iteration EMP, allowing each party a period not exceeding 30 days to respond unless otherwise agreed to in writing by the Secretary of State.

(3) The consultation requirement outlined in paragraph (2) applies where the Secretary of State considers it is necessary in relation to any amendment made to the approved second iteration EMP.

(4) Each part of the authorised development must be constructed in accordance with the relevant second iteration EMP applying to that part.

(5) Each part of the authorised development must be operated and maintained in accordance with the relevant third iteration EMP applying to that part.

(6) A second iteration EMP must—

- (a) be substantially in accordance with the first iteration EMP insofar as it relates to the relevant part of the authorised development, unless the Secretary of State is satisfied that any part of the second iteration EMP that is not substantially in accordance with the first iteration EMP would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement;
- (b) include the Arboricultural Impact Assessment which is broadly aligned with the information contained in the Tree Loss and Compensation Report⁽⁵⁾; and
- (c) be prepared in accordance with the consultation and determination provisions.

(7) The undertaker may only amend the approved second iteration EMP where no relevant party, as referred to in paragraph (2), has registered disagreement to the amendment being proposed by the undertaker.

(8) Where a relevant party has disagreed with the amendment being proposed by the undertaker to the approved second iteration EMP and agreement cannot be reached between the undertaker and that party, the undertaker is required to inform and seek approval for that amendment from the Secretary of State.

(9) Before approving any amendment referred to in paragraph (8), the Secretary of State may seek further information from the undertaker and carry out a consultation with relevant parties in accordance with paragraph (3).

(10) The undertaker must establish and maintain in an electronic form suitable for inspection by members of the public a register of all amendments to the approved second iteration EMP, falling within paragraph (7) or paragraph (9).

(11) On completion of the construction of each part of the authorised development the undertaker must prepare, and determine whether to approve in accordance with the consultation and determination provisions, a third iteration EMP for that part, which must substantially accord with the measures relevant to the operation and maintenance of the authorised development contained in the relevant second iteration EMP approved (either initially, or as subsequently amended) for that part in accordance with the provisions of this article and the undertaker may at any time subsequently determine to approve amendments to a previously approved third iteration EMP in accordance with the provisions of this paragraph.

(12) The mainline A66 must not be completed and opened for public use until—

(5) The Tree Loss and Compensation Planting Report was submitted by the undertaker to the Examining Authority during the examination of the application at deadline 4 (14 February 2023).

- (a) a detailed blanket bog compensation and maintenance plan, prepared in accordance with the outline blanket bog compensation and maintenance plan, has been submitted to and approved in writing by the Secretary of State, following consultation with Natural England; and
- (b) the approved detailed blanket bog compensation and maintenance plan has been implemented to the Secretary of State's satisfaction, following consultation with Natural England.

(13) Following implementation of the approved blanket bog compensation and maintenance to the Secretary of State's satisfaction the undertaker must maintain the restored blanket bog in accordance with the approved detailed blanket bog compensation and maintenance plan.

(14) The consultations referred to in paragraphs (12) and (13) are to be carried out in accordance with the procedures contained in paragraphs 1.4.17 to 1.4.34 and paragraphs 1.4.38 to 1.4.40 of the first iteration EMP, except that the functions of the "Principal Contractor" or "PC" may be performed by the undertaker.

(15) If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with the provisions of this article, those steps may be taken into account for the purposes of determining compliance with this article if they would have been valid steps for that purpose had they been taken after this Order came into force.

(16) In this article—

"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of archaeological investigations and mitigation works (but only to the extent undertaken in accordance with the guidance documents specified in paragraph B3.3.4 of Annex B3 of the first iteration EMP), ecological surveys and mitigation works, investigations for the purpose of assessing and monitoring ground conditions and levels, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment and the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the consultation and determination provisions" means the provisions contained in paragraphs 1.4.9 to 1.4.52 of the first iteration EMP that set out the matters on which consultation is required and the procedures that apply to the conduct of that consultation and which require the undertaker to maintain functional separation when making determinations under this article;

"the first iteration EMP" means the document certified by the Secretary of State under article 49 (certification of plans, etc.) as being the first iteration EMP (Environmental Management Plan) for the purposes of this Order;

"the mainline A66" means the A66 carriageway to be constructed or improved as part of Work Nos. 0102-1, 03-1, 0405-1, 0405-2, 06-1, 07-1, 08-1, 09-1 and 11-1;

"the outline blanket bog compensation and maintenance plan" means the document listed in Schedule 10 certified by the Secretary of State under article 49 as the outline blanket bog compensation and maintenance plan for the purposes of this Order;

"the second iteration EMP" means, in relation to any part of the authorised development, the development of the first iteration EMP in its application to that part of the authorised development, following the grant of development consent and in advance of its construction, as approved or subsequently amended in accordance with this article;

"submission" has the meaning given to it in paragraph 1.4.17 of the first iteration EMP;

"summary report" has the meaning given to it in paragraph 1.4.17 of the first iteration EMP; and

“the third iteration EMP” means, in relation to any part of the authorised development, the development of the second iteration EMP in its application to that part of the authorised development, to support its future management and operation following completion of its construction, as approved or subsequently amended in accordance with this article.

Detailed design

54.—(1) Subject to article 7 (limits of deviation) and the provisions of this article, the authorised development must be designed in detail and carried out so that it is substantially in accordance with—

- (a) the design principles;
- (b) the works plans;
- (c) the engineering section drawings: plan and profiles and the engineering section drawings: cross sections; and
- (d) the matters approved by the Secretary of State under paragraphs (5), (8) and (9).

(2) The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to further the purpose of conserving and enhancing the protected landscapes set out in—

- (a) section 11A of the National Parks and Access to the Countryside Act 1949(6); and
- (b) section 85 of the Countryside and Rights of Way Act 2008(7).

(3) The Secretary of State may approve a detailed design that departs from paragraph (1), following consultation with the relevant planning authority, the Environment Agency, Historic England and Natural England (on matters related to their statutory functions), provided that the Secretary of State is satisfied that any amendments to the design principles, the works plans, the engineering section drawings: plan and profiles and the engineering section drawings: cross sections would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(4) Where amended details are approved by the Secretary of State under paragraph (3), those details are deemed to be substituted for the corresponding design principles, works plans, engineering section drawings: plan and profiles and engineering section drawings: cross sections as the case may be and the undertaker must make those amended details available in electronic form for inspection by members of the public.

(5) No part of the authorised development comprised in scheme 06 is to commence until a detailed floodplain compensation scheme for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency.

(6) The floodplain compensation scheme prepared under paragraph (5) must provide suitable flood storage such that flood risk during construction and operation of scheme 06 to any land or property situated downstream is not increased as a result of flood waters that would be displaced by the Appleby to Brough scheme when compared to the baseline scenario as reported in the baseline hydraulic modelling agreed with the Environment Agency (in document HE565627-JBAU-XX-06-RP-HM-S3-P05-0001-Scheme6_Modelling_Report accepted on 15 May 2023) and arise from events with a magnitude up to and including the 1% annual exceedance probability, plus allowance for the climate change in line with the Environment Agency guidance applicable on the date when this Order was made.

(6) 1949 c. 97. Section 11A was inserted by section 62 of the Environment Act 1995 (c. 25). It was further amended by section 245(3) of the Levelling-up and Regeneration Act 2023 (c. 55) to make provision for the amended statutory duty placed on relevant authorities.

(7) 2000 c. 37. Section 85 was amended by section 245(6) of the Levelling-up and Regeneration Act 2023 to make provision for the amended statutory duty placed on relevant authorities.

(7) The floodplain compensation scheme approved under paragraph (5) must be implemented and maintained for the lifetime of scheme 06 unless otherwise agreed with the Environment Agency.

(8) The undertaker must not commence construction of any of the viaducts comprised in Work Nos. 0405-1A(xii), 0405-2A(x), 06-1C(vi) and 06-1C(x) until details of the design and external appearance of the viaducts have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.

(9) The undertaker must not commence the construction of Work No. 06-7 until detailed designs for these Works including the locations of any draining ponds and access roads and the associated ancillary works have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority.

(10) In this article, “commence” has the same meaning as in article 53(16).

Time limit for when development must begin

55.—(1) The authorised development must not begin later than the expiration of 5 years beginning with the date on which this Order comes into force.

(2) Section 155 (when development begins) of the 2008 Act applies to this article.