
STATUTORY INSTRUMENTS

2017 No. 1202

The M20 Junction 10a Development Consent Order 2017

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

40.—(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—

- (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

41. 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

42.—(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. There are amendments to this sub-section which are not relevant to this Order.

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) 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

43. Schedule 9 (protective provisions) has effect.

Certification of plans, etc.

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (document reference HA514442-MMGJV-GEN-SMW-RE-Z-4301 Rev C);
- (b) the classification of roads plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2700 Rev A); Drawing Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2701 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2702 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2703 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2704 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2705 Rev A
- (c) the outline construction environmental management plan (environmental statement appendix 17.1, volume 6.3 Rev B);
- (d) the engineering section drawings (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2900 Rev A);
- (e) the environmental masterplan (document reference HA514442-MMGJV-GEN-SMW-DE-Z-60213-60222 Rev C);
- (f) the environmental statement;

(2) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

(3) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to section 61 but none are relevant to this Order.

- (g) the general arrangement plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2600 Rev A); Drawing Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2601 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2602 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2603 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2604 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2605 Rev B
- (h) the land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2200 Rev B); Drawings Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2201 Rev C
 - HA514442-MMGJV-GEN-SMW-DE-Z-2202 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2203 Rev C
 - HA514442-MMGJV-GEN-SMW-DE-Z-2204 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2205 Rev C
- (i) the rights of way and access plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2400 Rev A); Drawings Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2401 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2402 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2403 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2404 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2405 Rev A
- (j) the special category land plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21200 Rev A);
- (k) the traffic regulation measures plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-21000 Rev A); Drawings Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-21001 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-21002 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-21003 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-21004 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-21005 Rev A
- (l) the speed limit plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2500 Rev A); Drawings Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2501 Rev B
 - HA514442-MMGJV-GEN-SMW-DE-Z-2502 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2503 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2504 Rev A
 - HA514442-MMGJV-GEN-SMW-DE-Z-2505 Rev A
- (m) the works plans (document reference HA514442-MMGJV-GEN-SMW-DE-Z-2300 Rev B); Drawing Nos:
 - HA514442-MMGJV-GEN-SMW-DE-Z-2301 Rev C
 - HA514442-MMGJV-GEN-SMW-DE-Z-2302 Rev B

HA514442-MMGJV-GEN-SMW-DE-Z-2303 Rev C
 HA514442-MMGJV-GEN-SMW-DE-Z-2304 Rev C
 HA514442-MMGJV-GEN-SMW-DE-Z-2305 Rev C
 HA514442-MMGJV-GEN-SMW-DE-Z-2306 Rev C, and

(n) any other plans or documents referred to in this Order as requiring certification, for certification that they are true copies of the documents referred to in this Order.

(2) 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

45.—(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(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 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.

(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

46. 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.

Traffic regulation

47.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than—
- (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act⁽⁵⁾,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004⁽⁶⁾.
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.
- Signed by authority of the Secretary of State for Transport

⁽⁵⁾ Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

⁽⁶⁾ 2004 c. 18.