
STATUTORY INSTRUMENTS

2023 No. 110

**The East Northamptonshire Resource
Management Facility Order 2023**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the East Northamptonshire Resource Management Facility Order 2023 and comes into force on the 13th February 2023.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽¹⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽²⁾;

“the 1980 Act” means the Highways Act 1980⁽³⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁴⁾;

“the 2008 Act” means the Planning Act 2008⁽⁵⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;

“access plan” means the plan certified as the access plan [Drawing Reference AU/KCW/07-21/22659] by the Secretary of State for the purposes of this Order;

“address” includes any number or address for the purposes of electronic transmission;

“apparatus”, unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development⁽⁷⁾ described in Schedule 1 (authorised development) and any other development authorised by this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business days” means Monday to Friday excluding Bank Holidays and other public holidays or days on which general or local elections are held;

“commence” means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act) excluding any operations relating to ecological enhancement works, planting, soil investigations or works in respect of land contamination, archaeological investigations,

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. There are other amendments to the 1990 Act not relevant to this Order.

(5) 2008 c. 29.

(6) 1991 c. 22.

(7) For the definition of “associated development” see section 115 of the 2008 Act.

site clearance, diversion of services, receipt and erection of construction plant and equipment, the erection of temporary fencing, hoardings and erection of site compound buildings and “commence” and “commenced” must be construed accordingly;

“DEC” means the document certified as the DCO environmental commitments [Report Reference AU/KCW/LZH/1724/01DECV3] by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the document of that name submitted with the application for this Order;

“hazardous waste” means waste defined as such in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005⁽⁸⁾ and as may be amended from time to time in these or equivalent regulations;

“hedgerow plan” means the plan certified as the hedgerow removal plan [Drawing Reference AU/KCW/07-21/22661] by the Secretary of State for the purposes of this Order;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“land plan” means the plan certified as the land plan [Drawing Reference AU/KCW/08-21/22752] by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plan;

“low level waste” means radioactive waste comprising solid low level radioactive waste typically with a specific activity of up to 200Bq/g;

“maintain” includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, demolish, replace and improve and “maintenance” must be construed accordingly;

“the Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“original order” means the East Northamptonshire Resource Management Facility Order 2013⁽⁹⁾ as amended by the East Northamptonshire Resource Management Facility (Amendment) Order 2018⁽¹⁰⁾;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽¹¹⁾;

“relevant planning authority” means North Northamptonshire Council or the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated from time to time;

“Requirements” means the requirements listed in Schedule 2 (Requirements), and any reference to a numbered Requirement is to be construed accordingly;

“restoration concept scheme” means the scheme certified as the restoration concept scheme [Drawing No. ENORTH 028] by the Secretary of State for the purposes of this Order;

⁽⁸⁾ S.I. 2005/894, amended by S.I. 2011/988. There are other amendments not relevant to this Order.

⁽⁹⁾ S.I. 2013/1752.

⁽¹⁰⁾ S.I. 2018/742.

⁽¹¹⁾ 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to this Order.

“restoration profile contour plan” means the plan certified as the restoration profile contour plan [Drawing Reference AU/KCW/07-21/22660revA] by the Secretary of State for the purposes of this Order;

“the site” means land within the Order limits;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003⁽¹²⁾;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“the undertaker” means Augean South Ltd (Company No. 04636789) or such other person as has the benefit of this Order under section 156(1) of the 2008 Act;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, soakaways, sewers and passages through which water flows except a public sewer or drain;

“Western Power Distribution” means Western Power Distribution (East Midlands) Plc (company number 02366923), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB

“work” means a work set out in Schedule 1 and shown on the works plans; and a reference to a work designated by a number or a combination of numbers and letters, is a reference to the work so designated in that Schedule; and

“the works plan” means the plan certified as the works plan [Drawing Reference AU/KCW/07-21/22655revA] by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) The expression “includes” must be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3. Subject to the provisions of this Order and to the Requirements in Schedule 2 (requirements) attached to this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Effect of this Order on the original order

4.—(1) The undertaker must not start operational use of Work No. 1A, Work No. 2, or Work No.3 under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate those works under the original order.

(2) Upon service of the notice under paragraph (1) construction, operation and maintenance of Work No.1A, Work No.2 and Work No.3 will cease under the original order and from that date the authorised development will be constructed, operated and maintained in accordance with the provisions of this Order and the plans certified under article 18.

(12) 2003 c. 21.

(3) From the date of the notice served under paragraph (1) the provisions of the original order will not apply in relation to the authorised development.

Limits of deviation

5. In carrying out, maintaining or diverting the authorised development, the undertaker may—
- (a) construct any such work within the lateral limits of deviation or extents of work shown on the works plans for the relevant work;
 - (b) in relation to Work No. 1 only deviate the works vertically upwards to a limit of 1 metre from the contours shown in grey on the restoration profile contour plan;
 - (c) deviate the works vertically downwards to any extent as may be found necessary to construct the authorised development, subject to approval by the Environment Agency.

Benefit of this Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order 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 of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of this Order

- 7.—(1) The undertaker 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 undertaker and the transferee; or
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker 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 undertaker, except in paragraph (3), includes 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 undertaker.

(4) The consent of the Secretary of State is not required under this article where the transfer or grant is made to Western Power Distribution for the purposes of undertaking Work No. 5.

Power to construct and maintain the authorised development

8. The undertaker may at any time construct and maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Maintenance of drainage works

9.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(13).

PART 3

SUPPLEMENTAL POWERS

Access to works

10.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the street authority following consultation by the street authority with the relevant planning authority, form and lay out such means of access (permanent or temporary) shown on the access plan or improve existing means of access, within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The consent of the street authority is not required for the formation, laying out or improvement of a new or existing means of access as shown on the access plan and described in Schedule 1 (authorised development).

Discharge of water

11.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(14) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but is not to be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(15).

(8) In this article—

(13) 1991 c. 59.

(14) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(15) S.I. 2016/1154

- (a) “public drain” means a drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(16) have the same meaning as in that Act.

Authority to survey and investigate the land

12.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and bore holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner or occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or bore holes.
- (4) No trial holes or bore holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (4)(a) in the case of a highway authority; or
 - (b) under paragraph (4)(b) in the case of a street authority; that authority is deemed to have granted consent.
- (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Felling or lopping of trees and removal of hedgerows

13.—(1) The undertaker may fell or lop or cut back any roots of any tree or shrub near any part of the authorised development, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove the important hedgerows as are within the Order limits and specified in Schedule 5 (removal of important hedgerows); and
- (b) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(5) The grant of consent of a local authority in terms of paragraph (4)(b) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) the local authority is deemed to have granted consent.

(7) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(17).

PART 4

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

14.—(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 is to prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law 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.

Procedure for Approvals and Protective Provisions

15. Schedule 3 (procedure for approvals under requirements) and Schedule 6 (protective provisions) of this Order have effect.

Planning permission

16. If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Defence to proceedings in respect of statutory nuisance

17.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁸⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (g) or (ga) of section 79(1) of that Act no order must be made, and no fine may be imposed, under section 82(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 site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹⁹⁾; 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—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with Requirement 5; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

⁽¹⁸⁾ 1990 c. 43, amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to the Environmental Protection Act 1990 not relevant to this Order.

⁽¹⁹⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the Control of Pollution Act 1974 not relevant to this Order.

(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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), must not apply where any 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.

Certification of plans etc

18.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the following plans and documents—

- (a) the access plan;
- (b) the hedgerow plan;
- (c) the works plan;
- (d) the restoration profile contour plan;
- (e) the restoration concept scheme; and
- (f) the DEC

for certification that they are true copies of the documents referred to in this Order.

(2) 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.

Service of Notices

19.—(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 services by post) of the Interpretation Act 1978(20) 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;
 - (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

20.—(1) Any difference under any provision of this Order, unless otherwise provided for in this Order, must be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order will not be subject to arbitration.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Lee Rowley
Parliamentary Under Secretary of State
Department for Levelling Up, Housing and
Communities

23rd January 2023