
STATUTORY INSTRUMENTS

2023 No. 923

The A38 Derby Junctions Development Consent Order 2023

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

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

Planning permission

7. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part 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.

Limits of deviation

8. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans—
 - (i) to a maximum of 1 metre in respect of the A38 mainline carriageway and slip road works; and
 - (ii) to the extent of the limits of deviation shown on those plans and as assessed in the environmental statement for all other works;
- (b) deviate vertically from the levels of the authorised development shown on the engineering section drawings to a maximum of 0.5 metres upwards or downwards with the exception of the following—

- (i) in respect of the excavation of the flood compensation areas and the flood storage areas, to a maximum of 0.5 metres downwards but to any distance upwards to ground level;
- (ii) in respect of Work No. 7 to a maximum of 1 metre upwards or downwards; and
- (iii) in respect of Work No. 1(h), 1(k), 10(a), 10(b), 10(d), 10(e) and 11(a) to a maximum of 2 metres downwards measured from the top of the relevant work,

except that these maximum limits of vertical deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Benefit of Order

9.—(1) Subject to article 10 (consent to transfer benefit of Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which 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 Order

10.—(1) Subject to paragraph (4), the undertaker may—

- (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), 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 undertaker.

(4) The consent of the Secretary of State is required for a transfer or grant under this article except where the transfer or grant is made to—

- (a) Western Power Distribution (East Midlands) PLC (company number 02366923, whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB) for the purposes of undertaking Work Nos. 9, 21, 22 and 35;
- (b) Cadent Gas Limited (company number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry CV7 8PE for the purposes of undertaking Work Nos. 9, 21 and 35;
- (c) Openreach Limited (company number 10690039, whose registered office is at Kelvin House, 123 Judd Street, London WC1H 9NP) for the purposes of undertaking Work Nos. 9, 21, 22 and 35;

- (d) Severn Trent Water Limited (company number 02366686, whose registered office is at Severn Trent Centre, 2 St John's Street, Coventry, CV1 2LZ) for the purposes of undertaking Work Nos. 9, 21, 22, 31 and 35;
- (e) Virgin Media Limited (company number 02591237, whose registered office is at 500 Brook Drive, Reading, RG2 6UU) for the purposes of undertaking Work Nos. 9, 21, 22 and 35; or
- (f) Hutchison 3G UK Holdings Limited (company number 03918124, whose registered office is at Star House, 20 Grenfell Road, Maidenhead, Berkshire SL6 1EH) for the purposes of undertaking Work No. 16.