

Proposed Lift and Shift Provisions for Park Farm Quarry

At the hearing of 29th January 2015 the MPA, W Clifford Watts and the landowners (the objectors) tabled a draft 'lift and shift' provision to be inserted in the DCO instead of reliance on the Mining Code. An amended version of this is attached.

The draft provision has been amended from the version tabled at the hearing. It was explained then that the provision was hastily sourced and was not specific to the situation. Following further consideration it was decided to amend the draft in favour of a specific provision which better suited the situation, added clarity to the Order and provided a modern approach to minerals development.

The draft provision commits the parties to negotiate and to take appropriate action, and to work together to find a pragmatic solution to minimise the potential effect on mineral working whilst causing the least possible disruption to the proposed scheme.

As such, the objectors commend this proposed amendment to the DCO for the ExA's consideration.

The Diversion Provisions

1. Definitions

In this Schedule the following expressions shall have the following meanings:

- 1.1. 'Authorised Development' means the nationally significant infrastructure project comprising the works described in the Order.
- 1.2. 'Company' means W Clifford Watts Limited Company Number 00391968
- 1.3. 'Described Land' means []
- 1.4. 'Diversion Route' means the route to be agreed or determined in accordance with Paragraph 3
- 1.5. 'Losses' means losses, costs (including without limitation monitoring, investigation and clean-up costs and the costs of professional advisers), claims (including without limitation claims from third parties or from any governmental regulatory or administrative public body), expenses, damages, injuries, liabilities and demands and 'Loss' shall be construed accordingly
- 1.6. 'Minerals Development' shall mean the winning and working of minerals
- 1.7. 'Order' means the Yorkshire and Humber Storage (Cross Country Pipeline) 20[]
- 1.8. 'Order Land' means the land so described in the Order
- 1.9. 'Planning Permission' shall have the meaning assigned to it by Section 336 of the Town and Country Planning Act 1990
- 1.10. 'Relevant Provision' means a section or other provision contained in the Order to the effect that no Minerals Development shall be carried out in some part of the Order Land where; either
- 1.10.1 such section or provision is expressly included solely for the protection of the Authorised Development; or
- 1.10.2 the decision to apply the section or provision to that part of the Order Land was made solely by reason of the position of Authorised Development
- 1.11. 'Undertaker' means the Undertaker so described in the Order

2. Activation of diversion provisions

2.1. If the Company desires to carry out any Minerals Development on or in the Order Land it will:

2.1.1. supply to the Undertaker full details of it in writing and

2.1.2. endeavour with the assistance if requested of the Undertaker free of charge to arrange the Minerals Development so as to minimise the extent of the diversion of the Authorised Development and will consult with the Undertaker to this end

2.2. If following such consultations:

2.2.1. the Company obtains Planning Permission for Minerals Development but the same is prevented by reason of the position of the Authorised Development; and/or

2.2.2. Planning Permission for the Minerals Development is refused by reason of the position of the Authorised Development;

the Company shall give written notice to the Undertaker stating whether or not the Company requires the diversion of the Authorised Development or part of it whereupon the Undertaker may in its unfettered discretion elect by notice in writing to be delivered within 3 months of the receipt of the Company's notice either:

2.2.3. to carry out such works to the Authorised Development as may be necessary so that the position of the Authorised Development does not prevent the Minerals Development; or

2.2.4. to divert the Authorised Development or part of it along the Diversion Route; or

2.2.5. to pay to the Company compensation for the loss of the minerals sterilised, (which shall include loss of profit and loss of mineral royalty) and for any increased costs of working minerals incurred by the Company as a result of the presence of the Authorised Development and/or by reason of the restriction of Minerals Development due to the existence of the Authorised Development such compensation to be determined in default of agreement by an arbitrator to be agreed between the Company and the Undertaker or failing agreement to be appointed on the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors

PROVIDED ALWAYS that:

2.2.6. if the Company obtains Planning Permission for the Minerals Development but does not give notice as above mentioned to the Undertaker requiring the diversion of the Authorised Development it

shall nevertheless notify the Undertaker of the obtaining of such Planning Permission and if the Undertaker shall be of the opinion that the Minerals Development would be likely to cause damage to the Authorised Development the Undertaker may elect to divert the Authorised Development or part of it along the Diversion Route or to carry out any such works as are described in Paragraph 2.2.3 above; and

2.2.7. the Company shall not be entitled to give to the Undertaker notice under this Paragraph 2.2 by reason of the refusal of Planning Permission (or by reason of the imposition of a condition in a Planning Permission preventing the Minerals Development from being carried out) unless the Company shall have afforded to the Undertaker the opportunity of appealing against the refusal of Planning Permission (or the imposition of such condition) including permitting the Undertaker to lodge or to continue and to conduct any such appeal in the name of the Company subject to the Undertaker bearing and indemnifying the Company against all costs and expenses incurred in connection with such appeal

3. Diversion route

The Diversion Route shall be such route within the Described Land as shall be agreed between the Company and the Undertaker or failing agreement as shall be determined by an arbitrator to be appointed by the President for the time being of the Institution of Civil Engineers as being the route which will cause the least possible interference with the use and enjoyment by the Company of the Described Land commensurate with the reasonable requirements of the Undertaker in connection with the reconstruction Authorised Development and its use.

4. Conditions of diversion

On a diversion of the Authorised Development or part of it under the preceding Paragraphs:

4.1. no consideration shall be payable by the Undertaker to the Company but the Undertaker shall make reasonable compensation to the Company or the occupier of the Described Land in respect of any Losses arising as a result of the diversion and the Undertaker shall make good any damage to the Described Land to the reasonable satisfaction of the Company

4.2. the Company's reasonable surveyor's and legal fees properly incurred in connection with the diversion shall be reimbursed by the Undertaker