

A19 Downhill Lane Junction Improvement

Scheme Number: TR010024

**7.20 Written Submission of Applicant's case
put orally at Issue Specific Hearing 3 on 17th
October 2019**

Rule 8(1)(k)
Planning Act 2008
Infrastructure Planning (Examination Procedure)
Rules 2010

**Volume 7
October 2019**

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

A19 DOWNHILL LANE JUNCTION IMPROVEMENT

The A19 Downhill Lane Junction Development Consent Order 202[]

WRITTEN SUBMISSION OF APPLICANT'S CASE PUT ORALLY AT ISSUE SPECIFIC HEARING 3 ON 17TH OCTOBER 2019

Regulation Number:	Rule 8(1)(k)
Planning Inspectorate Scheme Reference	TR010024
Application Document Reference	TR010024/APP/7.20
Author:	A19 Project Team, Highways England & Jacobs

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Rev 0	October 2019	Examination Deadline 3 Submission

A19 DOWNHILL LANE JUNCTION SCHEME

WRITTEN SUMMARY OF APPLICANT'S ORAL SUBMISSIONS

ISSUE SPECIFIC HEARING THREE ON 17 OCTOBER 2019 AT THE MECURE NEWCASTLE GEORGE WASHINGTON HOTEL, NEWCASTLE UPON TYNE

1 Introduction

- 1.1 This document summarises the case put by Highways England (**the Applicant**) in relation to the A19 Downhill Lane junction scheme (**the Scheme**) at Issue Specific Hearing Three (**ISH3**) which took place at the Mercure George Washington Hotel, Newcastle upon Tyne, NE37 1PH on 17 October 2019 at 14:00
- 1.2 In what follows, the Applicant's submissions on the points raised follow the agenda for the ISH3 set out in the Examining Authority's (**ExA**) agenda published on the Planning Inspectorate website on the 8 October 2019.
- 1.3 Where, during the hearing, the Applicant committed to consider an issue further and provide a written update, these are embedded at the relevant part of this document under the heading "post hearing note".

Issue Specific Hearing Three – Draft Development Consent Order

2 Agenda Item 1 – Welcome, introductions and arrangements

- 2.1 Tom Henderson (**TH**), Partner at BDB Pitmans LLP (**BDBP**), introduced himself as lead advocate for the Applicant. He noted that he would be assisted by Mustafa Latif-Aramesh (**MLA**), Senior Associate at BDBP.

3 Agenda Item 2 – Progress Report by the Applicant: Changes to the dDCO since ISH1

Agenda item 2(a)-(b) – changes to the dDCO between ISH1 and Deadline 2

- 3.1 TH clarified the different versions of the dDCO submitted so far:
 - 3.1.1 Version 0 was at application on 25 January 2019;
 - 3.1.2 Version 1 was produced on 5 March 2019 at the commencement of the s56 process to remove the "creation of rights only" schedule;
 - 3.1.3 Version 2 was produced on 24 July 2019 which corrected a number of typographical errors and ensured consistency with the endnotes in the made Testos Order; and

- 3.1.4 Version 3 and 4 were submitted at Deadline 1 and 2 respectively – the key changes in these iterations are set out below.
- 3.2 TH produced a tracked change version of the dDCO on the screen to demonstrate the changes since ISH1 (see **Appendix 2** of this note). TH clarified that since ISH1 two versions of the dDCO have been submitted at deadlines 1 and 2. The tracked changed version on the screen (and at **Appendix 2**) compared version 2, as at ISH1, with the latest version 4, thereby showing a consolidated set of the changes.
- 3.3 TH said that there were three substantive changes, with the remaining changes being minor and / or typographical corrections.
- 3.4 The first substantive amendment related to provisions for the creation of restrictive covenants. The Applicant has undertaken a review of the dDCO and decided there is no apparent need to impose restrictive covenants. As such, all provisions which refer to them have had that element removed. By way of example, TH showed Article 23 on the screen regarding the compulsory acquisition of rights, which no longer enables the Applicant to impose restrictive covenants over the order land.
- 3.5 The second substantive amendment relates to Schedule 2, responding to the ExA's previous questions on the HEMP and where this was drafted in the Schedule. TH said that the Applicant had taken the ExA's comments on board and aligned the dDCO with the Testo's Scheme. As such, the HEMP references have been moved to requirement 4. The provision remains the same in substance, but it is now aligned with drafting in the Testo's Order.
- 3.6 The third substantive amendment relates to the integrated NMU option. This has now been removed from Schedule 2, Requirement 3(3), and supporting definitions have been removed.
- 3.7 TH explained that the next iteration of the dDCO would include the removal of the reference to the ES addendum in Schedule 9.
- 3.8 TH also noted that the Applicant could confirm its approach to low noise road surfacing, a matter on which the Applicant had committed at ISH2 to consider. TH set out as follows:
- 3.8.1 Paragraph 2.7.22 of the ES (TR010024/APP/6.1) states that that the surfaces of the roads for the Scheme will be black asphalt. The existing roads within the Scheme footprint are hot rolled asphalt, but a thin surface course system will be used where roads require resurfacing in order to minimise road-surface-related noise emissions. Footnote 5 in that section clarifies that that to the north of the Scheme low road noise surfacing is to be applied on the A19 and associated slip roads as part of the Testo's scheme, whilst a section of A19 mainline has already been resurfaced. As such, a low noise road surface currently covers the A19 from the A19/A1231 junction to Testo's junction.
- 3.8.2 Appendix 12.1 of the ES (TR10024/APP/6.3) sets out further relevant information. In particular, Paragraph 12.3C.15 confirms that low noise road surface assumptions are only applied to roads where the traffic speed is greater than 47 mph because the benefit of low noise road surfacing is marginal at lower speeds. The overall effect, therefore, is that the low noise road surfacing commitment applies to the slip roads forming part of the strategic road network, hence section 12.3C.11 of Appendix 12.1 confirms that only the slips would be constructed using low noise road surfaces. The local highway authority has confirmed

the basis of the assessment and it was the Applicant's understanding that they are content with the proposal not to use low noise road surfacing on the local road network.

- 3.8.3 In terms of securing via the DCO the provision of low noise road surface for those relevant parts of the road network, TH noted the REAC does not include reference to low noise road surfaces as it is assumed to be provided in line with standards. Hence it is treated as embedded mitigation as part of the Applicant's assessment. TH therefore proposed that the engineering drawings and sections would be amended to secure the provision of low noise road surfacing, which would ensure it is secured through Requirement 3.

Agenda item 2(c): relationship between the Proposed Development and the A19 Testo's project.

- 3.9 MLA noted there were two substantive issues. The first related to the use of the Testo's construction compound. There had been a discussion on article 30 at the CAH, and the Applicant's previous written responses set out how this operated.
- 3.10 The second issue concerned Article 36(1) which deals with modification to made Testo's order. MLA noted this provision would authorise the modification of plans approved in that scheme so that a proposed non-motorised user route proposed for the Testo's scheme (and the associated stopping up of the B46) is removed. The rationale and justification for this is provided in the Revised Testo's plans, drawings and sections document (TR010024/APP/7.5).
- 3.11 MLA noted the non-motorised user route proposed in the Testo's scheme does not complement the segregated non-motorised user facilities proposed under the Scheme; whereas the existing B46 bridleway would form part of a more desirable route. The non-motorised user provision, proposed under this Scheme, provides a safer segregated route for all users. The route consented in the Testo's Order has been assessed to encourage users to cross the A19 via the improved Downhill Lane junction. This would potentially put users at greater risk due to the new junction arrangement and forecast increase in traffic flows around the junction. The purpose of the amendment is therefore to remove the proposed NMU provision (which has not yet been constructed) from the Testo's Order.
- 3.12 MLA further noted that the Applicant has consulted on the above changes (see the Consultation Report (Application Document Reference TR010024/APP/5.1)) and has carried out an environmental assessment of the above proposals (see further Appendix 1.2 of the Environmental Statement (Application Document Reference TR010024/APP/6.3)). The legal basis for the inclusion of and detailed explanation of the particular provisions associated with the amendment to the Testo's Order is contained in section 5.121 to 5.124 of the Explanatory Memorandum (Application Document Reference: TR010024/APP/3.2).
- 3.13 On the certification of the Testo's plans, MLA noted article 41(4) of the dDCO ensures that the updated plans are certified for the purposes of the Testo's Order.

[Post-hearing note: Schedule 8 of the dDCO modifies the certification article in the Testo's Order so that the updated plans are taken to be updated plans for the purposes of article 40(2) of the Testo's Order].

Agenda item 2(d): relationship between the Proposed Development and IAMP

- 3.14 TH stated that there was discussion at ISH2 on the interrelation with IAMP, and the ExA had been taken through the IRD. TH stated that in drafting terms there is nothing peculiar or bespoke to ensure compliance with IAMP, since this could be achieved by the usual drafting conventions.
- 3.15 In particular, Requirement 3(1) affords flexibility for the Applicant to modify the Scheme design provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departure from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison to those reported in the environmental statement. This could, depending on the specific nature of the interface concerned, be utilised to ensure scheme integration matters could be dealt with at detailed design stage.

4 Agenda Item 3 – IP's Issues

- 4.1 No comments were raised by the Applicant on this point.

5 Agenda Item 4 – ExA Issues

- 5.1 In response to a query from the ExA on whether the definition of “commencement” ties the Applicant to what has been environmentally assessed, TH said that the approach taken drew on established Highways England precedents. The drafting was considered to be as comprehensive as the Applicant could reasonably make it, but TH noted that the Applicant would consider this point further.

[Post hearing note: having considered the definition further, the Applicant does not consider it necessary to make an amendment to the definition of “commence” for the reasons set out in its response to Question 8 in the Written Submission of Applicant's Case at ISH1 & OFH1 and responses to ExA's question on the dDCO (Application Document Reference TR010024/APP/7.8) [REP1-010].]

- 5.2 On the definition of maintain, TH said the Applicant would consider whether a drafting amendment was required to tie the Applicant into the environmental assessments.

[Post hearing note: the Applicant has accepted the ExA's suggestion and the definition of “maintain” is now limited to activities within the scope of the Applicant's environmental assessments.]

- 5.3 On the definition of the “Testo's plans” in Article 2(1), MLA noted:
- 5.3.1 As the Testo's plans were not intended to be certified for the purposes of the Scheme, they would not be included in Schedule 9. Article 41(4), in conjunction with the amendment to Article 40 of the Testo's Order, ensured the plans would be certified for the purposes of the Testo's scheme
- 5.3.2 The Applicant would consider whether a reference to the volume and version number of the Testo's plans should be inserted.

[Post hearing note: the Applicant has inserted a reference number into the definition of the Testo's plans. The Applicant would note that the references to the plans therein are secured through the modifications in Schedule 8 of the dDCO to Schedule 10 in the Testo's Order.]

- 5.4 The ExA then turned to Schedule 9 and asked whether that should include examination library references. TH said the Applicant would consider the point and respond in writing.

[Post hearing note: the Applicant does not consider it necessary to reference examination library references on the basis that (i) the Applicant's references are contained on the cover of the documents themselves; (ii) the examination library will, over time, be removed and deleted whereas the Applicant's references will endure.]

- 5.5 On Article 6, TH stated Limits of Deviation are necessary and provide a required proportionate degree of flexibility in the delivery of an NSIP. The proposed limits of deviation are within the scope of the assessments carried out for the ES (see para 2.18.2 of the ES). The provision is heavily precedented and it does not allow the Secretary of State to approve matters which are beyond the scope of the ES, and it was therefore not a tailpiece which offended Advice Note 15. TH stated that this provision was authorised in the Testo's scheme, and the A14 Scheme.

[Post hearing note: other precedents include the M20 Junction 10 Order 2017 (see article 8), and article 4 of the Northampton Gateway Rail Freight Interchange Order 2019].

- 5.6 On a related matter, the ExA asked about the procedure for discharging a variation to the Limits of Deviation; as this is an Article rather than a Requirement, there was seemingly nothing which tied it to the discharge procedures in Schedule 2. TH committed to consider the matter and make any necessary drafting amending.

[Post-hearing note: the Applicant has made clear that the process which applies to the Requirements will also apply to an application for certification under Article 6(2).]

- 5.7 In relation to Article 7(2) TH said that the Applicant's response to Question 16 in the Written Submission of Applicant's Case at ISH1 & OFH1 and responses to ExA's question on the dDCO (Application Document Reference TR010024/APP/7.8) [REP1-010] sets out the Applicant's position in full. TH summarised that Article 7 is not concerned with transferring powers (e.g. compulsory acquisition powers) but instead addressed a legal peculiarity of the Planning Act 2008. Absent specific provisions to address the benefit of the Order, the powers would run with the land and not the undertaker. Article 8, which squarely relate to the transfer of powers, can be distinguishable from that. TH emphasised that the provisions are not novel in this case having been used heavily in other DCOs, and there is no need to redraft them.

- 5.8 In relation to the ExA's queries on the scope of Article 30, MLA submitted that the purpose of Article 30(1) is to allow the use of Testo's construction compound for the Scheme. Article 30(1) provides for the use of the compound, provided it continues to be utilised for the purposes of the Testo's scheme. In circumstances where the Testo's compound is used for the Scheme, Article 30(2), prevents construction activities on plot 1/14b on the land plan. The Applicant's intention is not to curtail the use of temporary possession powers over plot 1/14b but to ensure that where the Testo's construction compound is being used, no physical works take place on plot 1/14b.

- 5.9 MLA explained the reason it does not prevent the temporary possession is because Plot 1/14b is “landlocked” by the Scheme (regardless of the use of the Testo’s construction compound) and is therefore not capable of being used whilst plot 1/14a is being occupied temporarily for construction. The Applicant is therefore seeking to avoid a situation where a temporary access to plot 1/14b would have to be considered, with the associated additional cost and disruption that would cause. The Applicant understands that the landowner of plots 1/14a and 1/14b is content with the Applicant taking temporary possession of both plots. In addition, there was a practical benefit in serving a single temporary possession notice at the same time.
- 5.10 The ExA noted that his reading of the Article had been that it was an “either or” scenario. MLA confirmed that the “either or” in this case refers to construction activities rather than the temporary possession. MLA acknowledged that “construction activities” had not been defined, but was intended is to capture the works at the construction compound. MLA said the Applicant would consider a drafting amendment to ensure the meaning of “construction activities” is clear, and to provide further clarity on the purpose of article 30.

[Post-hearing note: amendments to article 30 have duly been made in the latest version of the dDCO to address the ExA’s queries.]

- 5.11 TH noted the wider context of the use of the Testo’s construction compound was to minimise the environment effect and maximise efficiency of not using two construction compounds.
- 5.12 In relation to article 36 / Schedule 8 and the associated removal of a section of NMU route provided for in the Testo’s Order, the ExA requested clarification on what happens if work in Testo’s DCO commences and the compulsory acquisition powers over those plots are exercised before the Downhill Lane DCO is made.
- 5.13 TH noted Applicant’s intention is to “undo” the extinguishment of a right, and, in part stop the provision of another public right of way which is not proposed to be constructed. TH explained that the timing of Testo’s works is the key issue. The current position is that works are being undertaken in the corridor of land in which the NMU route would be situated, but nothing that has been done will need to be reserved. There is sufficient time for this Scheme to be considered and decided before the relevant NMU works would have to be commenced.
- 5.14 TH added that, more generally, the Applicant is trying to coordinate 3 DCOs and a major planning application. There are matters which require a degree of flexibility to achieve this.
- 5.15 In relation to Schedule 1, the ExA queried whether a limitation concerning environmental assessments needed to be inserted before the lettered works. TH said the Applicant would consider this and respond in writing.

[Post-hearing note: the Applicant does not consider this is necessary given the lettered works are only exercisable “in connection with” the numbered works. Accordingly, the works form part of the environmental assessments, and certainty over their location is provided by the plans and sections which accompany the application and which will become certified documents. The Applicant notes that this limitation is not included in any of the following “made” highway DCOs: Testo’s, A14, M4 J3-12, A556, A160, and M20 J10a. Accordingly, the Secretary of State has endorsed the drafting approach being taken.]

- 5.16 In response to the ExA queries on the side agreement regarding the adoption of roads, TH stated that the Applicant is in the process of concluding this with the local highway authorities. It supports article 10 of the DCO. The Applicant's belief is that the agreement can be concluded shortly, alongside the local authority SoCG.

6 Agenda item 5 – Issues and Actions Arising

- 6.1 TH set out the actions arising:

- 6.1.1 revision to engineering drawings to secure the provision of low noise road surfacing;
- 6.1.2 definitions of “maintain”, “commence” and “Testo’s plans” to be considered further;
- 6.1.3 review the need to draft in a process for discharging variations to the Limits of Deviation under article 6;
- 6.1.4 drafting of article 30 (shared use of compound) to be considered further;
- 6.1.5 drafting of article 36 (certification of Testo’s plans) to be considered further;
- 6.1.6 review the need to include a limitation to the “lettered” works in Schedule 1, in relation to the environmental assessments undertaken; and
- 6.1.7 provide an update on the highway side agreement at Deadline 3.

7 Agenda item 6 – next steps

- 7.1 Having discussed the possibility of expediting the ExA’s examination timetable, TH agreed to submit the Applicant’s suggested revision to the examination timetable, noting that the ExA stated he was minded to hold no further hearings.

[Post-hearing note: please see the proposed expedited timetable at Appendix 1 of this document.]

8 Agenda item 7 – close of hearing

APPENDIX 1

EXPEDITED TIMETABLE

<p>Deadline 3 For receipt by ExA of:</p> <ul style="list-style-type: none"> • any revised/updated SoCGs • comments on LIRs • comments on responses to ExA's Written Questions (ExQ1) • post-hearing submissions including written submissions of oral cases • the Applicant's revised dDCO • responses to any further information requested by the ExA for this deadline • comments on the Applicant's proposed changes to the Application • comments on any additional information/submissions received by Deadline 2 	<p>Tuesday 29 October 2019</p> <p>(12 noon)</p>
<p>Deadline 4 For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on the Applicant's revised dDCO • comments on any revised/updated SoCGs (if any) • comments on any additional information/submissions received by Deadline 3 • responses to any further information requested by the ExA for this deadline 	<p>Tuesday 5 November 2019</p> <p>(12 noon)</p>

<p>Publication by ExA of:</p> <ul style="list-style-type: none"> • Further Written Questions (ExQ2) (if required) • the ExA's preferred dDCO or dDCO commentary (if required) • Report on the Implications for European Sites (RIES) (if required) 	<p>Tuesday 19 November 2019</p>
<p>Deadline 5 For receipt by ExA of:</p> <ul style="list-style-type: none"> • responses to ExQ2 (if issued) • comments on the ExA's preferred dDCO or dDCO commentary (if issued) • comments on any additional information/submissions received by Deadline 4 • responses to any further information requested by the ExA for this deadline • final signed SoCGs 	<p>Thursday 28 November 2019</p> <p>(12 noon)</p>
<p>Deadline 6 For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on the ExA's RIES (if required) • post-hearing submissions including written submissions of oral cases • final signed SoCGs • comments on any additional information/submissions received by Deadline 5 • responses to any further information requested by the ExA for this deadline • comments on responses to ExQ2 (if required) • the Applicant's Final Preferred DCO in the SI template validation report 	<p>Thursday 5 17 December 2019</p> <p>(12 noon)</p>
<p>Deadline 7 For receipt by ExA of:</p> <ul style="list-style-type: none"> • comments on any final signed SoCGs 	<p>Thursday 12 December—7 January 2020</p>

<ul style="list-style-type: none"> • comments on any additional information/submissions received by Deadline 6 • comments on the Applicant's Final Preferred DCO • responses to any further information requested by the ExA for this deadline • comments on responses to ExQ2 (if required) • the Applicant's Final Preferred DCO in the SI template validation report • responses to any further information requested by the ExA for this deadline 	<p>(12 noon)</p>
<p>The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.</p> <p>The ExA may close the examination before the end of the six month period if he is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Thursday 13 February 2020</p>

APPENDIX 2

DRAFT DCO SHOWING CHANGES MADE BETWEEN ISH1 (VERSION 2) AND ISH3 (VERSION 4)

INFRASTRUCTURE PLANNING

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009**

**THE A19 DOWNHILL LANE JUNCTION -DEVELOPMENT
CONSENT ORDER 20[]**

Draft Development Consent Order

Document Reference No.	3.1(24)
Regulation No.	Regulation 5(2)(b)
Author	BDB Pitmans LLP
Date	18 January 2019 – Draft
Revision history:	19 July <u>10 September</u> 2019
Planning Inspectorate reference number:	TR010024

STATUTORY INSTRUMENTS

20[] No. 0000

INFRASTRUCTURE PLANNING

The A19 Downhill Lane Junction Development Consent Order
20[]

Made - - - - 20[]
Coming into force - - 20[]

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An application has been made to the Secretary of State, in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under section 37 of the Planning Act 2008(b) (“the 2008 Act”).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 15, 17, 19 to 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the A19 Downhill Lane Junction Development Consent Order ~~201~~ 20[] and comes into force on [] 20[].

Interpretation

2.—(1) In this Order—

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1984 Act” means the Road Traffic Regulation Act 1984(h);

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

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

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

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524 and S.I. 2017/572.

(b) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1980 c. 66.

(g) 1981 c. 66.

(h) 1984 c. 27.

(i) 1990 c. 8.

(j) 1991 c. 22.

(k) 2008 c. 29.

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“carriageway” has the same meaning as in the 1980 Act;

“CEMP” means the construction environmental management plan;

“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, non-intrusive investigations for the purpose of assessing ground conditions, pre-construction ecology surveys, pre-construction ecological mitigation and works under mitigation licences, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;

“cycle track” has the same meaning as in the 1980 Act and includes part of a cycle track**(a)**;

“electronic transmission” means a communication transmitted—

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

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

“the engineering drawings and sections” means the drawings and sections listed in Schedule 9 (documents to be certified) and certified as the engineering drawings and sections by the Secretary of State for the purposes of this Order;

“environmental statement” means the document of that description certified as the environmental statement by the Secretary of State for the purposes of this Order;

“footway” and “footpath” have the same meaning as in the 1980 Act;

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

“the land plans” means the plans listed in Schedule 9 (documents to be certified) and certified as the land plans by the Secretary of State for the purposes of this Order,

“limits of deviation” means the limits of deviation referred to in article 6 (limits of deviation);

“maintain” in relation to the authorised development includes to inspect, repair, adjust, alter, remove or reconstruct and any derivative of “maintain” is to be construed accordingly;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

“the Order limits” means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

“the outline CEMP” means the document of that description submitted with the application for this Order and certified as the outline CEMP by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means in any given provision of this Order, the planning authority for the area to which the provision relates;

(a) The definition of “cycle track” (in section 329(1) of the 1980 Act) was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(b) 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 the Order.

“Secretary of State” means the Secretary of State for Transport;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land), of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works, undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“streets, rights of way and access plans” means the plans listed in of Schedule 9 (documents to be certified) and certified as the streets, rights of way and access plans by the Secretary of State for the purposes of this Order;

“the Testo’s plans” means the revised Testo’s plans, drawings and sections submitted with the application for this Order and certified by the Secretary of State for the purposes of this Order and for the purposes of the A19/A184 Testo’s Junction Alteration Development Consent Order 2018(a);

“traffic authority” has the same meaning as in section 121A(b) (traffic authorities) of the 1984 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“trunk road” means a highway which is a trunk road by virtue of—

- (a) section 10(c) or 19(1)(d) of the 1980 Act;
- (b) an order or direction under section 10 of that Act; or
- (c) an order granting development consent; or
- (d) any other enactment;

“undertaker” means Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;

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

“the works plans” means the plans listed in Schedule 9 (documents to be certified) and certified as the works plans 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 airspace above its surface ~~and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.~~

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the streets, rights of way and access plans.

(6) References in this Order to numbered works are references to works as numbered in Schedule 1 (authorised development).

(a) S.I. 2018/994.

(b) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 of Schedule 8, to the New Roads and Street Works Act 1991 (c. 22).

(c) Section 10 was amended by section 22(2) of the New Roads and Street Works Act 1991; paragraph 22 of Schedule 2 to the Planning Act 2008; and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(d) As amended by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(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

4. 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.

Maintenance of drainage works

5.—(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(a).

Limits of deviation

6. 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 to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the engineering drawings and sections to a maximum of 0.50 metres upwards or 0.50 metres downwards,

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, 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

7.—(1) Subject to paragraph (2) and article 8 (consent to transfer benefit of Order), 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 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 Order

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

(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(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 required for a transfer or grant under this article.

PART 3

STREETS

Application of the 1991 Act

9.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the 1980 Act or section 184(b) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

section 56(c) (power to give directions as to timing);

section 56A(d) (power to give directions as to placing of apparatus);

section 58(e) (restrictions on works following substantial road works);

section 58A(f) (restriction on works following substantial street works);

section 73A(g) (power to require undertaker to re-surface street);

section 73B(h) (power to specify timing etc. of re-surfacing);

(a) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(b) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.

(c) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(d) Section 56A was inserted by section 44 of the Traffic Management Act 2004.

(e) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.

(f) Section 58A was inserted by section 52 of the Traffic Management Act 2004.

(g) Section 73A was inserted by section 55 of the Traffic Management Act 2004.

(h) Section 73B was inserted by section 55 of the Traffic Management Act 2004.

section 73C(a) (materials, workmanship and standard of re-surfacing);
section 78A(b) (contributions to costs of re-surfacing by undertaker); and
Schedule 3A(c) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(d) referred to in paragraph (4) are—
section 54(e) (advance notice of certain works), subject to paragraph (6);
section 55(f) (notice of starting date of works), subject to paragraph (6);
section 57(g) (notice of emergency works);
section 59(h) (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 10 (construction and maintenance of new, altered or diverted streets)—
~~(a)~~ affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
~~(b)~~(a) _____ and the undertaker is not by reason of any duty under that article to maintain a street, to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
~~(e)~~(b) _____ has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets

10.—(1) Any street (other than a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the street lies and, unless otherwise agreed in writing with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street (other than a trunk road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority in whose area the street lies and, unless otherwise agreed in writing with the local street authority, be maintained by and at the expense of the local street authority from its completion.

(a) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
(b) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
(c) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.
(d) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.
(e) As also amended by section 49(1) of the Traffic Management Act 2004.
(f) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(g) As also amended by section 52(3) of the Traffic Management Act 2004.
(h) As amended by section 42 of the Traffic Management Act 2004.

(3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the undertaker.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause dangers to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Classification of roads, etc.

11.—(1) On the date on which a street described in Schedule 3 is completed and open for traffic—

- (a) a road described in columns (1) and (2) of Part 1 (trunk roads) of Schedule 3 (classification of roads, etc.) will be a trunk road as if it had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which it is to become a trunk road;
- (b) a road described in columns (1) and (2) of Part 2 (~~other~~ classified roads) of Schedule 3 (classification of roads, etc.) is to be:
 - (i) a principal road for the purpose of any enactment or instrument which refers to highways classified as principal roads; and
 - (ii) a classified road for the purpose of any enactment or instrument which refers to highways classified as classified roads,
 - (iii) as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act; and
- (c) a non-motorised user route described in Part 3 (~~other public rights of way non-motorised user routes~~) of Schedule 3 (classification of roads, etc.) will be of the type described in column (1) to the extent described in column (2).

(2) From such day as the undertaker may determine no person is to drive any motor vehicle at a speed exceeding the limit of 40 miles per hour on the roads described in columns (1) and (2) of Part 4 (~~roads subject to 40 miles per hour limit~~) of Schedule 3 (classification of roads, etc.).

(3) The application of paragraphs (1) and (2) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) 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 made, it is deemed to have granted consent.

Permanent stopping up and restriction of use of streets and private means of access

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 (permanent stopping up of streets and private means of access) to the extent specified and described in column (2) of that Schedule.

(2) No street or private means of access specified in column (1) of Parts 1 and 2 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street specified in column (1) of Part 3 (**streets to be stopped up for which no substitute is to be provided**) of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street or private means of access concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to article 33 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

14. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads, etc.) are open for traffic, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) applies—

- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
 - (i) the removal of any obstruction to traffic;
 - (ii) the maintenance, improvement, reconstruction or operation of the road;
 - (iii) the laying, erection, maintenance, or renewal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(a); or
 - (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
 - (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
 - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
 - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(c); or
- (c) in relation to a vehicle waiting when the person in control of it is—
 - (i) required by law to stop;
 - (ii) obliged to stop in order to avoid an accident; or
 - (iii) prevented from proceeding by circumstances outside the ~~person's~~ **person's** control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 for the purposes of selling, or dispensing of, goods from that vehicle, unless the

(a) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).
 (b) 1991 c. 56.
 (c) 2000 c. 26.

goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004(a).

Traffic regulation

16.—(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 it has—

- (a) given not less than—
 - (i) 12 weeks’ notice in writing of its 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 its 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 its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker’s intention in the case of sub-paragraph (a)(i), or within 7 days of the 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(b) (power of local authorities to provide parking spaces) of the 1984 Act,

(a) 2004 c. 18.

(b) 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 to, the 1991 Act.

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).

(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 of 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 it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act shall 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.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3) and (4), 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(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 must not 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 must not 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 under 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.

(a) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^(a).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

(a) S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/757.
(b) 1991 c. 57.

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(a) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

19.—(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 limitation on the scope of sub-paragraph (a), make trial 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 limitation on the scope 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.

(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 and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within a 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.

(a) Section 152 was amended by S.I 2009/1307.

(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 powers 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 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 will be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to paragraph (9) of article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

21. Part 2 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) is incorporated in this Order subject to the modification that for the “acquiring authority” substitute the “undertaker” and for “undertaking” substitute “authorised development.”

Time limit for the exercise of the authority to acquire land compulsorily

22.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as modified by this Order; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights ~~and restrictive covenants~~

23.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land, ~~or impose restrictive covenants affecting the Order land,~~ as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence.

(2) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act, as substituted by Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights ~~and imposition of restrictive covenants~~), where the undertaker acquires a right over ~~land or the benefit of a restrictive covenant affecting~~ land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(a) 1981 c. 67.

(3) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right ~~or the imposition of a restrictive covenant~~.

Private rights over land

24.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1)(a) (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of the rights ~~or the imposition of restrictive covenants~~ under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right ~~or the burden of the restrictive covenant~~—

- (a) as from the date of the acquisition of the right ~~or the benefit of the restrictive covenant~~ by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the right ~~or the imposition of the restrictive covenant~~ over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), and sections 186 (1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(b) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(a) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 22 (time limit for the exercise of the authority to acquire land compulsorily) of A19 Downhill Lane Junction Development Consent Order 20[]”.

(3) In section 11A(c) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for the exercise of the authority to acquire land compulsorily) of the A19 Downhill Lane Junction Development Consent Order 20[]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat) —

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A19 Downhill Lane Junction Development Consent Order 20[], which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), 29 (temporary use of land for carrying out the authorised development), 30 (temporary use of land for construction compound), or 31 (temporary use of land for maintaining the authorised development) of the A19 Downhill Lane Junction Development Consent Order 20[].”.

Application of the 1981 Act

26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection 2 substitute—

(a) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c.22).
(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.
(c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(b) (time limit for the execution of a general vesting declaration).

(6) In section 5B(1)(c) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 22 (time limit for the exercise of the authority to acquire land compulsorily) of the A19 Downhill Lane Junction Development Consent Order 20[]”.

(7) In section 6(d) (notices after execution of declaration) for subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(e) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by the Order) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or of the airspace over the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 25 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(g) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

28.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development

(a) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.

(b) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(c) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.

(d) Section 6 was amended by paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22) and section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11).

(e) Section 7(1) was substituted by Schedule 18 to the Housing and Planning Act 2016.

(f) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

(g) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, will be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

29.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 22 (time limit for the exercise of the authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph 1(a)(ii).

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 6, or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section (4) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights ~~and restrictive covenants~~); or
- (b) acquiring any part of the subsoil (or rights in the subsoil of or airspace over) that land under article 27 (acquisition of subsoil or airspace only).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use 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.

Temporary use of land for construction compound

30.—(1) The undertaker may only enter on and take temporary possession of the land identified as plot reference 2/1, 2/2a and 2/2b shown on the land plans for the purposes of the authorised development if the development authorised by the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (the "Testo's Order") has commenced and the main construction compound referred to as Work No. 31 in Schedule 1 to the Testo's Order has not been vacated at the commencement of development authorised by this Order.

(2) The undertaker may not carry out construction activities on the land identified as plot reference 1/14b shown on the land plans at the same time as it is in possession of the land identified as plot reference 2/1, 2/2a and 2/2b on the land plans for the purposes of this Order.

Temporary use of land for maintaining the authorised development

31.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and

(a) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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.

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

32.—(1) Subject to the provisions of Schedule 7 (protective provisions), article 23 (compulsory acquisition of rights ~~and restrictive covenants~~) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights ~~or impose restrictive covenants~~ over any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, and remove or reposition apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) article 33 (apparatus and rights of statutory undertakers in stopped up streets) of this Order.

Apparatus and rights of statutory undertakers in stopped up streets

33.—(1) Where a street is stopped up under article 13 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 33 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(b); and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

PART 6 OPERATIONS

Felling or lopping of trees and removal of hedgerows

35.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using 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, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(c) and includes important hedgerows.

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.
(b) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.
(c) S.I. 1997/1160.

PART 7
MISCELLANEOUS AND GENERAL

Disapplication of legislative provisions, etc.

36.—(1) The A19/A184 Testo’s Junction Alteration Development Consent Order 2018 is ~~modified~~**amended** in accordance with Schedule 8, where—

- (a) column 1 sets out where the amendment is to be made;
- (b) column 2 sets out how the amendment is to be made; and
- (c) column 3 sets out the text to be substituted, inserted or omitted.

(2) The provisions of the Neighbourhood Planning Act 2017^(a), insofar as they relate to temporary possession of land under article 29 (temporary use of land for carrying out the authorised development), article 30 (temporary use of land for construction compound), and article 31 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 31(11), any maintenance of any part of the authorised development.

Application of landlord and tenant law

37.—(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 Town and Country Planning Act 1990

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(a) 2017 c. 20.

Defence to proceedings in respect of statutory nuisance

39.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) 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)(b) 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) of the Control of Pollution Act 1974(c); 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.

Protection of interests

40. Schedule 7 (protective provisions) to the Order has effect.

Certification of documents, etc.

41.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 9 (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 set out in Schedule 9 requires to be amended to reflect the terms of the Secretary of State's decision to make the 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 will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) As soon as practicable after the making of this Order, the undertaker must submit copies of the Testo's plans to the Secretary of State for certification as true copies of those plans and documents.

Service of notices

42.—(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

(a) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(b) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(c) 1974 c. 40. Section 61(9) amended by section 162 of, and paragraphs 15(1) and 15(3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

(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^(a) 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

43. 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

(a) 1978 c. 30.

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.

Date

Signed
Title
Department

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administration area of Sunderland, South Tyneside, or both Sunderland & South Tyneside.

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising—

Work No. 1 – The construction of a new private means of access approximately 960m in length that links the A1290 with; the new drainage attenuation ponds (Work Nos. 2 & 18), and the fields to the south of the junction (Plots 1/3a and 1/5b), as shown between points 1/1, 1/27, 1/28 and 1/29 on the Streets, Rights of Way and Access Plans.

Work No. 2 – The construction of a new drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No.2 is adjacent to the existing A19, approximately 50m north of Washington Road footbridge and accessed via a new private means of access (Work No. 1).

Work No. 3 – The stopping up and removal of an existing A19 layby as shown between points 1/A and 1/B on the Streets, Rights of Way and Access Plans, the construction of a new edge of carriageway for the A19 mainline including drainage works, and the construction of a new northbound off-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 3 is approximately 625m in length that originates at the existing A19 dual carriageway and terminates at the proposed Downhill Lane circulatory carriageway (Work No. 7), as shown between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans.

Work No. 4 – The construction of drainage features and the reinstatement of barrier in the existing mainline A19 central reserve as shown between points 1/2 and 1/6 on the Streets, Rights of Way and Access Plans.

Work No. 5 – The construction of a new southbound on-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 5 is approximately 640m in length that originates at the proposed Downhill Lane circulatory carriageway (Work No. 7) and terminates at the existing A19 dual carriageway as shown between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans.

Work No. 6 – The construction of a new shared non-motorised user facility – footway/cycle track approximately 260m in length between a proposed non-motorised user crossing facility on Washington Road (East) and a junction with Work No. 8, as shown between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans.

Work No. 7 – The construction of a new circulatory carriageway, incorporating the existing Downhill Lane overbridge and a new overbridge to the south; including earthworks, abutments and a single span structure, and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 7 is approximately 550m in length and will accommodate the new entry/exit links of Work Nos. 3, 5, 9, 10, 19 and 20, and the improved existing entry/exit links of Work Nos. 23 and 24.

Work No. 8 – The construction of a new shared use non-motorised user facility and ancillary works including, but not limited to, embankments, cuttings, roadside furniture, roadside signage, electrical connections and the construction of a multi-span structure with approach ramps. Work No. 8 is

approximately 1,110m in length that links to the improved existing Bridleway B46 via a non-motorised user crossing facility on Downhill Lane (East) and the A1290 non-motorised user facilities as shown between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans.

Work No. 9 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 9 is approximately 320m in length, forming the new Washington Road (East), originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Washington Road (East), as shown between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans.

Work No. 10 – The construction of a widened and realigned road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 10 is approximately 115m in length, forming the new Downhill Lane (East) and including a new shared non-motorised user crossing facility; originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Downhill Lane (East), as shown between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans.

Work No. 11 – The construction of a new private means of access linking Downhill Lane (East) with the field to the southeast (Plot 1/7b), as shown at point 1/16 on the Streets, Rights of Way and Access Plans.

Work No. 12 – The construction of a new private means of access approximately 150m in length that links Downhill Lane (East) with the new drainage attenuation pond (Work No. 13) as shown between points 1/17 and 1/20 on the Streets, Rights of Way and Access Plans.

Work No. 13 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No.13 is adjacent to the improved Bridleway B46 (Work No. 14), and accessed via a new private means of access (Work No. 12).

Work No. 14 – Improvement to the existing Bridleway B46 for a length of approximately 215m, from the site boundary to the proposed Downhill Lane (East) non-motorised user crossing facility, as shown between points 1/21 and 1/19 on the Streets, Rights of Way and Access Plans.

Work No. 15 – The improvement of the existing A1290 for a length of approximately 50m for the construction of a non-motorised user crossing facility, as shown between points 1/22 and 1/24 on the Streets, Rights of Way and Access Plans.

Work No. 16 – The construction of a new shared use non-motorised user facility approximately 60m in length that links Follingsby Lane and the proposed A1290 non-motorised user crossing facility (Work No. 15), as shown between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans.

Work No. 17 – The construction of new drainage features on the A1290 over a length of approximately 180m, including a replacement carrier pipe under the existing verge and filter drain at the earthwork toe.

Work No. 18 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 18 is adjacent to the proposed A1290 non-motorised user facility (Work No. 8), and accessed via a new private means of access (Work No. 1).

Work No. 19 – The construction of a new road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 19 is approximately 290m in length, forming the new A1290 westbound carriageway; originating at the new circulatory carriageway (Work No. 7) and merging with the

existing single carriageway A1290, as shown between points 1/35 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 20 – The construction of a realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 20 is approximately 290m in length, forming the new A1290 eastbound carriageway; originating at the new circulatory carriageway (Work No. 7) and terminating at the existing single carriageway A1290, as shown between points 1/36 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 21 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 21 is approximately 115m in length, forming the new Downhill Lane (West); originating at the existing Downhill Lane (West) and terminating at a junction with the proposed eastbound A1290 carriageway (Work No. 20), as shown between points 1/31 and 1/32 on the Streets, Rights of Way and Access Plans.

Work No. 22 – The construction of a new private means of access approximately 55m in length that links the realigned Downhill Lane (West) (Work No. 21) with the existing Make-Me-Rich Farm private means of access, as shown between points 1/33 and 1/34 on the Streets, Rights of Way and Access Plans.

Work No. 23 – The construction of an improved and realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 23 is approximately 135m in length, originating at the new circulatory carriageway (Work No. 7) and terminating on the northbound link to Testo's junction, as shown between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans.

Work No. 24 – The construction of an improved section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 24 is approximately 140m in length, originating on the southbound link from Testo's junction and terminating at the new circulatory carriageway (Work No. 7), as shown between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans.

Work Nos. 25A, 25B and 25C – The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste. In accordance with article 30 (temporary use of land for construction compound), Work No. 25 will be carried out on either—

- (a) Plots 1/14a and 1/14b, shown on Works Plan Sheet 1 labelled as Work Nos. 25A and 25B; or
- (b) Plots 1/14a, 2/1, 2/2a and 2/2b, shown on Works Plan Sheet 1 & 2 labelled as Work Nos. 25A and 25C.

In connection with the construction of any of these works, further development within the Order limits consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;

- (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
- (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
- (f) works to place, divert, relocate or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
- (g) works to alter the course of, or otherwise interfere with a watercourse;
- (h) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (i) works for the benefit or protection of land affected by the authorised development;
- (j) works to place or maintain road furniture;
- (k) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling);
- (l) the felling of trees and hedgerows;
- (m) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
- (n) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (o) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990(a);

“European protected species” has the same meaning as in regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010(b);

“HEMP” means the handover environmental management plan, ~~to be developed and completed by the end of the construction, commissioning and handover stage of the authorised development which is to contain—~~

(a) ~~the environmental information needed for the future maintenance and operation of the authorised development;~~

(b) ~~the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and~~

(c) ~~a record of the consents, commitments and permissions resulting from liaison with statutory bodies;~~

“IAMP LLP” means ~~the limited liability partnership registered in England and Wales, partnership number OC412694, whose registered office address is Sunderland City Council, PO BOX 100, Civic Centre, Sunderland, Tyne and Wear, SR2 7DN;~~

“IAMP TWO” means ~~the phase of the International Advanced Manufacturing Park project promoted by IAMP LLP which is proposed to be consented under the 2008 Act pursuant to directions made by the Secretary of State under section 35 of that Act;~~

“IAMP TWO NMU solution” means ~~the non-motorised user facilities connecting Washington Road to the A1290 via a new bridge crossing the A19 promoted by IAMP LLP as part of IAMP TWO;~~

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by or on behalf of the strategic highway authority for England or any equivalent replacement published for that document;

“the specified non-motorised user provision” means ~~the Proposed Non-Motorised User Route as shown on the Streets, Rights of Way and Access Plans, excluding—~~

(a) ~~the part of that route between point 1/15 to point 1/9; and~~

(b) ~~such part of that route between point 1/9 to point 1/7 as is necessary to connect to the IAMP TWO NMU solution;~~

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(c); and

(a) 1990 c. 43 as amended by section 86(2) of the Water Act 2003 c. 37.
(b) S.I. 2010/490 to which there are amendments not relevant to this Order.
(c) 1981 c. 69.

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“REAC” means the register of environmental actions and commitments (Appendix 1.3 of the environmental statement, application document TR010024/APP/6.3).

Time limits

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2. The authorised development must commence no later than the expiration of 5 years beginning with the date that this Order comes into force.

Detailed design

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3.—(1) ~~Subject to sub-paragraph (3), the~~ authorised development must be designed in detail and carried out in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

~~(3) Without limitation on the scope of sub-paragraph (1), the authorised development may be designed in detail and carried out excluding the specified non-motorised user provision where—~~

- ~~(a) IAMP TWO has been granted development consent by the Secretary of State;~~
- ~~(b) that consent includes the IAMP TWO NMU solution; and~~
- ~~(c) those facilities are constructed and open for traffic.~~

Construction environmental management plan

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4.—(1) No part of the authorised development is to commence until a CEMP, substantially in accordance with the outline CEMP for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority to the extent that it relates to matters relevant to its function.

(2) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to working hours of 07:30–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) overnight traffic management measures;
 - (v) cases of emergency; and
 - (vi) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
 - (i) Dust, Noise and Nuisance Management Plan;

- (ii) Site Waste Management Plan;
- (iii) Environmental Control Plan: Invasive Species;
- (iv) Environmental Control Plan: General Ecology;
- (v) Soil Management Plan;
- (vi) Surface Water Management Plan;
- (vii) COSHH (control of substances hazardous to health) Material, Waste Storage and Refuelling Plan;
- (viii) Energy and Resource Use Management Plan;
- (ix) Materials Management Plan;
- (x) Contaminated Land Management Plan;
- (xi) Archaeological Control Plan;
- (xii) Pollution Prevention Plan.

(3) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(4) A HEMP must be developed and completed by the end of the construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(5) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

~~(4)~~(6) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) The authorised development must be landscaped in accordance with a landscaping scheme which sets out details of all proposed hard and soft landscaping works and which has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement (application document TR010024/APP/6.1).

(3) The landscaping scheme prepared under sub-paragraph (1) must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing trees to be retained, with measures for their protection during the construction period;
- (d) proposed finished ground levels; and
- (e) implementation timetables for all landscaping works.

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(4) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

Contaminated land and groundwater

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6.—(1) In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development which was not previously identified in the environmental statement, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority and the Environment Agency, and the undertaker must complete a risk assessment of the contamination in consultation with the relevant planning authority and the Environment Agency.

(2) Where the undertaker determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the Environment Agency.

(3) Remediation must be carried out in accordance with the approved scheme.

Protected species

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7.—(1) No part of the authorised development is to commence until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the authorised development, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.

(2) Following pre-construction survey work or at any time when carrying out the authorised development, where—

- (a) a protected species is shown to be present, or where there is reasonable likelihood of it being present;
- (b) application of the relevant assessment methods used in the environmental statement show that a significant effect is likely to occur which was not previously identified in the environmental statement; and
- (c) that effect is not addressed by any prior approved scheme of protection and mitigation established in accordance with this paragraph,

the relevant parts of the relevant works must cease until a scheme of protection and mitigation measures has been submitted to and approved in writing by the Secretary of State.

(3) The undertaker must consult with Natural England on the scheme referred to in sub-paragraph (2) prior to submission to the Secretary of State for approval, except where a suitably qualified and experienced ecologist, holding where relevant and appropriate a licence relating to the species in question, determines that the relevant works do not require a protected species licence.

(4) The relevant works under sub-paragraph (2) must be carried out in accordance with the approved scheme, unless otherwise agreed by the Secretary of State after consultation with Natural England, and under any necessary licences.

Surface and foul water drainage

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8.—(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures set out in the REAC including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function.

(2) The surface and foul water drainage system must be constructed in accordance with the approved details, unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Archaeological remains

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9.—(1) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority as soon as reasonably practicable from the date they are identified.

(2) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (1) for a period of 14 days from the date of any notice served under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

Traffic management

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10.—(1) No part of the authorised development is to commence until a traffic management plan for that part has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be constructed in accordance with the traffic management plan referred to in sub-paragraph (1).

Amendments to approved details

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11. With respect to any requirement which requires the authorised development to be carried out in accordance with the details or schemes approved under this Schedule, the approved details or schemes are taken to include any amendments that may subsequently be approved in writing by the Secretary of State.

Fencing

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12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Volume 1, Series 0300 of the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

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13. Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with—

- (a) the day immediately following that on which the application is received by the Secretary of State;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 14 (further information); or
- (c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the Secretary of State does not determine an application within the period set out in sub-paragraph (1), the Secretary of State is taken to have granted all parts of the application (without any condition or qualification at the end of that period).

(3) Where—

- (a) an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement included in this Order;
- (b) the Secretary of State does not determine such application within the period set out in sub-paragraph (1); and
- (c) the application is accompanied by a report from a body required to be consulted by the undertaker under the requirement that considers it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement,

the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

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14.—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application.

(2) In the event that the Secretary of State considers such further information to be necessary the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within that 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 13 (applications made under requirements) and in this paragraph.

(4) In this paragraph, “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a).

(a) 1971 c. 80.

Register of requirements

15.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the Secretary of State has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

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Anticipatory steps towards compliance with any requirement

16. 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 any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

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SCHEDULE 3
CLASSIFICATION OF ROADS, ETC.

Articles 11 and 15

PART 1
TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A19(T) Northbound Off-slip	Between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans
A19(T) Northbound Link Road to Testo's junction	Between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans
A19(T) Southbound Link Road from Testo's junction	Between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans
A19(T) Southbound On-slip	Between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans

PART 2
OTHER CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/22 and 1/24 and between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans
Downhill Lane (West)	Between point 1/31 and 1/32 on the Streets, Rights of Way and Access Plans

PART 3
NON-MOTORISED USER ROUTES

<i>(1)</i> <i>NMU Route</i>	<i>(2)</i> <i>Extent</i>
Non-segregated footway/cycle track	Between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans

PART 4
ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans

SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
A19(T) Northbound Off-slip	Between points 1/D and 1/W on the Streets, Rights of Way and Access Plans	Work No. 3
A19(T) Southbound On-slip	Between points 1/G and 1/C on the Streets, Rights of Way and Access Plans	Work No. 5
A1290	Between points 1/U and 1/X on the Streets, Rights of Way and Access Plans	Work No. 19 & 20
Washington Road (East)	Between points 1/E and 1/F on the Streets, Rights of Way and Access Plans	Work No. 9
Washington Road (East)	Between points 1/K and 1/L on the Streets, Rights of Way and Access Plans	Work No. 7
Downhill Lane (West)	Between points 1/T and 1/V on the Streets, Rights of Way and Access Plans	Work No. 21 & 22

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted</i>
Private means of access adjacent to the south of Downhill Lane (East)	At point 1/H as shown on the Streets, Rights of Way and Access Plans	Work No. 11
Private means of access adjacent to the north of Downhill Lane (East)	At point 1/J as shown on the Streets, Rights of Way and Access Plans	Work No. 12
Private means of access adjacent to the east of the A1290	At point 1/R as shown on the Streets, Rights of Way and Access Plans	Work No. 1
Private means of access adjacent to the east of the A1290	At point 1/S as shown on the Streets, Rights of Way and Access Plans	Work No. 1

PART 3

STREETS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>
A19(T) Northbound Layby	Between points 1/A and 1/B on the Streets, Rights of Way and Access Plans

SCHEDULE 5

Articles 23(4) and 23(5)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS ~~AND IMPOSITION OF RESTRICTIVE COVENANTS~~

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right ~~or the imposition of a restrictive covenant~~ as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right ~~or restrictive covenant~~ over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable ~~or the restrictive covenant enforceable~~”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 20[]);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 20[]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, ~~or to the imposition of a restrictive covenant~~ under article 23 (compulsory acquisition of rights ~~and restrictive covenants~~)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(a) 1973 c. 26.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, ~~or the restrictive covenant imposed to be imposed~~; or
- (b) the land over which the right is or is to be exercisable, ~~or the restrictive covenant is or is to be enforceable~~.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired ~~or the restrictive covenant~~ is to be imposed is depreciated by the acquisition of the right ~~or the imposition of the restrictive covenant~~ but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired ~~or the restrictive covenant which is to be imposed~~ is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right ~~or restrictive covenant~~, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right ~~or enforcing that restrictive covenant~~; and sections 11A(b) (powers of entry; further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right ~~or the enforcement of the restrictive covenant~~ in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired ~~or enforce the restrictive covenant imposed~~, subject to compliance with that section as respects compensation.

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I.2009/1307.

(b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I.2009/1307.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over ~~or restrictive covenant affecting~~, the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of the A19 Downhill Lane Junction Development Consent Order 20[] in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A19 Downhill Lane Junction Development Consent Order 20[] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right ~~or the imposition of the restrictive covenant would—would—~~

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right ~~or the imposition of the covenant~~,
- (b) the proposed use of the right ~~or covenant~~, and
- (c) if the right ~~or covenant~~ is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right ~~or the imposition of the covenant~~ would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 6

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Plot reference Number shown on Land Plans</i>	(2) <i>Purpose for which temporary possession may be taken</i>	(3) <i>Relevant part of the authorised development</i>
1/2c, 1/2d	Required to provide construction access.	Work No. 17
1/2e	Required to provide construction access.	Work Nos. 17, 19 & 20
1/3a, 1/4a, 1/5b, 1/7b, 1/11, 1/12a	Required to provide an area for construction material storage and storage of plant.	All Works
1/3a	Required to provide construction access.	Work Nos. 1, 2, 3, 8, 17, 18 & 19
1/4a	Required to provide construction access.	Work Nos. 20 & 21
1/5b	Required to provide construction access.	Work Nos. 1, 3, 7, 8, 19 & 20
1/7b	Required to provide construction access.	Work Nos. 8, 9 & 11
1/7d, 1/10h, 1/10i, 1/12b, 1/15a	Required to provide site access.	All Works
1/10f	Required to provide construction access and site access.	Work Nos. 12, 13 & 25
1/14a, 1/14b, 1/15b	The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.	Work No. 25A & 25B
1/2f, 1/6	Required to provide a perimeter enclosure and exclusion zone to allow for safe construction.	Work No. 8
2/1, 2/2a	Required to provide access to the site compound.	Work No. 25C
2/2b	The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.	Work No. 25C

SCHEDULE 7

Article 32 and 40

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

(a) 1989 c. 29.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(c) 1991 c. 56.

(d) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c. 21).

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,
- (c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

(a) 2003 c. 21.

(b) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 32 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 8

Article 36

AMENDMENTS TO THE A19 TESTO'S JUNCTION ALTERATION
DEVELOPMENT CONSENT ORDER 2018

(1) <i>Where the amendment is to be made</i>	(2) <i>How the amendment is to be made</i>	(3) <i>Text to be substituted, inserted or omitted</i>
Article 40	After sub-paragraph (3) insert	“(4) The Testo’s plans as defined in the A19 Downhill Lane Junction Development Consent Order 20[] (the “latter Order”) are to be taken as plans or documents certified in accordance with paragraph (2) above once certified in accordance with article 41 (certification of documents, etc.) of the latter Order.”
In Schedule 1 (Authorised Development)		
Work No.4	Omit	
Work No.6	Omit	
In Schedule 3 (Classification of roads, etc.), Part 3 (Other public rights of way)		
Cycle track	Omit row 1	
In Schedule 4 (Permanent stopping up of streets and private means of access), Part 1 (Public rights of way to be stopped up and for which a substitute is to be provided)		
The stopping up of public right of way B46	Omit row 1	
In Schedule 10 (Documents to be certified)		
Works Plans – Regulation 5(4)	In column (3) (Revision) substitute “2” with	“3”
Streets, Rights of Way and Access Plans – Regulation 5(4)	In column (3) (Revision) substitute “1” with	“2”
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	In column (3) (Revision) substitute “1” with	“2”

SCHEDULE 9

Article 41

DOCUMENTS TO BE CERTIFIED

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference	TR010024/APP/4.3	0 30
Environmental Statement – Volume 1	TR010024/APP/6.1	0
Environmental Statement – Volume 2: The Figures	TR010024/APP/6.2	0
Environmental Statement – Volume 3: The Appendices	TR010024/APP/6.3	0
Environmental Statement – Addenda	TR010024/APP/6.11	0
Statement relating to Statutory Nuisances	TR010024/APP/6.5	0
Flood Risk Assessment	TR010024/APP/6.6	0
Assessment of Nature Conservation Effects	TR010024/APP/6.7	0
Assessment of Historic Environmental Effects	TR010024/APP/6.8	0
Habitat Regulation Assessment	TR010024/APP/6.10	0
Outline CEMP	TR010024/APP/7.2	0
<u>Application Documents Errata</u>	<u>TR010024/APP/7.6</u>	<u>1</u>
Location Plan – Regulation 5(2)(o)	TR010024/APP/2.1	0
Scheme Layout Plan – Regulation 5(2)(o)	TR010024/APP/2.2	0
Land Plans – Regulation 5(4)	TR010024/APP/2.3	0
Works Plans – Regulation 5(4)	TR010024/APP/2.4	0
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010024/APP/2.5	0
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010024/APP/2.6	0

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Highways England to undertake works to alter the junction of the A19 Downhill Lane Junction, near West Boldon in South Tyneside and [Washington in Sunderland and](#) carry out all associated works.

The Order permits Highways England to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also includes provisions in connection with the maintenance of the authorised development.

A copy of the plans, engineering drawings and sections, the book of reference, the environmental statement and the outline CEMP mentioned in this Order and certified in accordance with article 41 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Highways England, [Lateral, 8 City Walk, Leeds, West Yorkshire, LS11 9AT](#) [Great North House, 20 Allington Way, Darlington, D11 4DY](#).

STATUTORY INSTRUMENTS

20[] No.

INFRASTRUCTURE PLANNING

The A19 Downhill Lane Junction Development Consent Order
20[]

BDB PITMANS LLP
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Solicitors and Parliamentary Agents
[17771851.04—19.0708 — 10.09.19]