

2015 No. 780

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Ordsall Chord) Order 2015

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Made

31st March 2015

Coming into force

21st April 2015

An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 for an Order under sections 1, 3 and 5 of the Transport and Works Act 1992¹ (“the 1992 Act”).

The Secretary of State has caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 30th March 2015.

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order—

Notes

¹ Section 1 was amended by the Planning Act 2008 (c.29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1559

Extent

Preamble: England

PART 1

Preliminary

✓ Law In Force

16.— Construction of bridges

(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority (such approval not to be unreasonably withheld).

(2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Commencement

Pt 2 art. 16(1)-(2): April 21, 2015

Extent

Pt 2 art. 16(1)-(2): England

Supplemental powers

✓ Law In Force

17.— Discharge of water

(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works 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 Network Rail 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 1991¹.

(3) Network Rail 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) Network Rail 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) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) Nothing in this article overrides the requirement for an environmental permit under [regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016]².

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

(9) In this article—

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

Notes

- ¹ Section 106 was amended by sections 35(1) and (8) and 43(2) 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).
- ² Words substituted by Environmental Permitting (England and Wales) Regulations 2016/1154 Sch.29(2) para.89 (January 1, 2017)

Commencement

Pt 2 art. 17(1)-(9)(b): April 21, 2015

Extent

Pt 2 art. 17(1)-(9)(b): England

 Law In Force

18.— Protective works to buildings

(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within plots 13A and 28A to 28E as Network Rail considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works 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 works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may (subject to paragraph 5) 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 Network Rail may (subject to paragraphs (5) and (6))—

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

2015 No. 2044

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The London Underground (Bank Station Capacity Upgrade) Order 2015

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Made

22nd December 2015

Coming into force

12th January 2016

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 for an Order under sections 1 and 5 of the Transport and Works Act 1992¹ (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 18th December 2015.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order—

Notes

¹ Section 1 was amended by the Planning Act 2008 (c. 29), section 36, Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

Extent

Preamble: England

✔ Law In Force

16.— Agreements with street authorities

- (1) A street authority and the Company may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (d) the execution in the street of any of the works referred to in article 11(1) (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Commencement

Pt 2 art. 16(1)-(2)(b): January 12, 2016

Extent

Pt 2 art. 16(1)-(2)(b): England

Supplemental powers

✔ Law In Force

17.— Discharge of water

- (1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991.
- (3) The Company 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 Company 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) (a) The Company must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The Company must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.
- (8) If a person who receives an application for consent or approval fails to notify the Company of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.
- (9) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

]¹

Notes

- ¹ Words substituted by Environmental Permitting (England and Wales) Regulations 2016/1154 Sch.29(2) para.103 (January 1, 2017)

Commencement

Pt 2 art. 17(1)-(9)(b): January 12, 2016

Extent

Pt 2 art. 17(1)-(9)(b): England

 Law In Force

18.— Protective works to buildings, roads and apparatus of a statutory undertaker

- (1) Subject to the following provisions of this article, the Company may at its own expense carry out such protective works to—
- (a) any building; or
- (b) any road; or
- (c) any apparatus of a statutory undertaker
- lying within the Order limits as the Company considers to be necessary or expedient.
- (2) Protective works may be carried out—
- (a) at any time before or during the construction in the vicinity of the building, road or apparatus of any part of the authorised works; or

2017 No. 830

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The London Overground (Barking Riverside
Extension) Order 2017**

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Made

15th August 2017

Coming into force

5th September 2017

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006¹ for an Order under sections 1 and 5 of the Transport and Works Act 1992² (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 14th August 2017.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to the 1992 Act, makes the following Order—

Notes

¹ Amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.

² Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29); section 5 was amended by S.I. 2012/1659.

Extent

Preamble: England

✓ Law In Force

13.— Use of private roads for construction

(1) TfL may use any private road within the Order limits or any private road abutting the Order limits or which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) TfL must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

Commencement

Pt 2 art. 13(1)-(3): September 5, 2017

Extent

Pt 2 art. 13(1)-(3): England

Supplemental powers

✓ Law In Force

14.— Discharge of water

(1) TfL may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991¹.

(3) TfL 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) TfL 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) TfL must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) TfL must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension or any other potentially polluting material.

(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.

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

(9) In this article, other than references to “public sewer or drain” or “watercourse”, expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Notes


- ¹ Section 106 was amended by sections 35(1) and (8) and 43(2) 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).

Commencement

Pt 2 art. 14(1)-(9): September 5, 2017

Extent

Pt 2 art. 14(1)-(9): England

 Law In Force

15.— Water abstraction

(1) The restriction imposed by section 24(1) (restrictions on abstraction) of the Water Resources Act 1991 does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

(2) Section 48A(1) (duty not to cause loss or damage to another by the abstraction of water) of the Water Resources Act 1991¹ does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(3) Where—

- (a) TfL causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and
- (b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (2),

TfL must compensate the other person for the loss or damage.

2018 No. 446

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Hope Valley Capacity) Order
2018**

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Made

28th March 2018

Coming into force

18th April 2018

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006¹ for an Order under sections 1 and 5 of the Transport and Works Act 1992² ("the 1992 Act").

The Secretary of State has caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposal comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 16th February 2018.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act, makes the following Order:

Notes

¹ As amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.

² Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

Extent

Preamble: England

(8) The replacement footpath specified in column (4) of Schedule 5 provided under this article is to be a public footpath and, subject to paragraphs (9) to (12), in relation to that replacement footpath, section 28¹ (compensation for loss caused by public path creation order) of the 1980 Act applies as if the right of way over the replacement footpath had been created by a public path creation order.

(9) In its application by virtue of paragraph (8), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (10) to (12).

(10) In subsection (1), for "the authority by whom the order was made" substitute "Network Rail Infrastructure Limited".

(11) For subsection (2), substitute—

"(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the date the replacement footpath specified in column (4) of Schedule 5 to the Network Rail (Hope Valley Capacity) Order 2018 is open for use and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited."

(12) Subsection (3) is omitted.

(13) For the purposes of paragraphs (8) to (12), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, in its application to section 28 of the 1980 Act by virtue of section 307(1), has effect as if in subsection (2) for "the authority from whom the compensation in question is claimed" the words "Network Rail Infrastructure Limited" were substituted.

Notes

¹ As amended by S.I. 2006/1177.


Commencement

Pt 2 art. 13(1)-(13): April 18, 2018

Extent

Pt 2 art. 13(1)-(13): England

Supplemental powers

 Law In Force

14.— Discharge of water

(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works 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 exercise of the powers in paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991¹.
- (3) Network Rail 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) Network Rail 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) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (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.
- (8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case maybe.
- (9) In this article—
- (a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, Environment Agency, a National Park Authority, an internal drainage board or a local authority; and
 - (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Notes

¹ Section 106 was amended by sections 35(1), 35(8) and 43(2) 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).

Commencement

Pt 2 art. 14(1)-(9)(b): April 18, 2018

Extent

Pt 2 art. 14(1)-(9)(b): England

2018 No. 923

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Werrington Grade Separation) Order 2018

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Made

3rd August 2018

Coming into force

24th August 2018

An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006¹ for an Order under sections 1, 3 and 5 of the Transport and Works Act 1992² ("the 1992 Act").

The Secretary of State has caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 1st August 2018.

The Secretary of State, in exercise of the powers conferred by sections 1, 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order—

Notes

¹ As amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.

² Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

Extent

Preamble: England

✓ Law In Force

15.— Construction of bridges

(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority (such approval not to be unreasonably withheld).

(2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Commencement

Pt 2 art. 15(1)-(2): August 24, 2018

Extent

Pt 2 art. 15(1)-(2): England

Supplemental powers

✓ Law In Force

16.— Discharge of water

(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 Network Rail 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 1991¹.

(3) Network Rail 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) Network Rail 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) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016².

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

(9) In this article—

- (a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Notes

¹ Section 106 was amended by sections 35(1), 35(8) and 43(2) 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).


² As amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/575.

Commencement

Pt 2 art. 16(1)-(9)(b): August 24, 2018

Extent

Pt 2 art. 16(1)-(9)(b): England

 Law In Force

17.— Power to survey and investigate land

(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail 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;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient's rights under paragraph (15); and
- (b) a copy of any warrant issued under paragraph (8).



Report to the Secretary of State for Transport

by Alwyn B Nixon BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Transport

Date: 7 March 2018

TRANSPORT AND WORKS ACT 1992

TOWN AND COUNTRY PLANNING ACT 1990

Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

NETWORK RAIL (WERRINGTON GRADE SEPARATION) ORDER 201[x]

including

APPLICATION FOR DEEMED PLANNING PERMISSION DIRECTION

Dates of Inquiry: 21-24 November 2017

File Ref: DPI/E0535/17/5

297. As regards the matter of operational noise, WNC points out that there has been a significant increase in the number of trains using the GNGE, following recent improvements. This has given rise to increased disturbance for residents close to the line, especially at night. However, the GNGE line improvement was completed in 2014. It forms no part of the Order Scheme. It follows that the appropriate baseline against which to measure the predicted change in operational railway noise arising from the Werrington Grade Separation project is the situation after the GNGE line improvement, not before it. [174, 184, 212-3]
298. The technical assessment of the predicted change in operational noise as a result of the Scheme has been carried out using the approach and methodology as set out in established guidance on railway noise and which meets the requirements of the EIA Directive. The resulting predicted increases in operational noise as a result of the Scheme are minor, and not significant. Although WNC point out that +3dB represents a doubling of the measured noise energy, this does not equate to a perceived doubling of the noise level; +3dB is generally regarded as the order of increase at which the change in noise level becomes noticeable. In particular, the Scheme is predicted to give rise to a negligible increase (+1.5dB in the most significantly affected location) in night time train noise on the GNGE, since there is no planned increase in night time use of that line as a result of the Scheme, and no evident reason why increased LDHS passenger train capacity on the ECML should lead to additional night-time use of the GNGE. [185-192]
299. For the reasons given at paragraph 288 above, including that the NIRR/CRN regime provides an established regulatory framework for dealing with operational noise arising from railway projects, I do not consider that a planning condition to address operational railway noise arising from the Scheme is appropriate in this case.
300. The Environment Agency (EA) does not object in principle to the Order. It is content that the proposed Scheme satisfies the NPPF and the EA's flood risk management requirements at this location, subject to full constructional details of the works first being approved by the EA. The single remaining point of contention relates to the protective provision proposed in the Order at Article 38 Schedule 12 paragraph 18(3)(b). In short, the provision as proposed by Network Rail says that, in the event that the EA fails to determine an application for approval of details within the prescribed period, the EA's permission is deemed to have been given. The EA contend that the position in such an eventuality (albeit unlikely) should be that permission is deemed to be refused. [197-206, 220-3]
301. Both sides cite various legislative provisions in support of their respective stances. However, I am convinced by the points made by Network Rail on this matter. Deemed approval is the established precedent in relation to a failure to determine details submitted pursuant to TWA Orders. In such a circumstance the protective provisions provide for approval of detail; at the time they are implemented the principle of the Scheme's acceptability will have already been determined, by the decision to make the Order. The EA is therefore being asked to approve detailed drawings for a scheme that has already been given consent by the Secretary of State, where matters such as environmental impacts and controls have already been fully considered by an independent body. This is a quite different situation to the regulatory position under the Environmental

Permitting Regulations where the EA is asked to give consent to an application made to it at first instance. [198, 200, 224-6]

302. The form of protective provisions in TWA Order cases which include a deemed approval provision has been consistently adopted since the inception of TWA Orders in 1993 through to the present. There is no instance of a made TWA Order which includes deemed refusal. Although the EA relies on the terms of Development Consent Orders (DCOs) for its stance, DCOs are considered and made under a significantly different legislative and regulatory process. [202-3, 227]

303. The protective provisions are a streamlined process in place of any normal arrangements. Their purpose is to provide a bespoke regime for delivery of the authorised works, not merely to replicate the regulatory provisions to be disapplied. Deemed refusal would create potential for delay in the construction of the Scheme through no fault of the applicant, with impact on costs to Network Rail and to passengers, whilst the parties go to arbitration. Avoiding unforeseen delay in the construction process is particularly important because possessions of the railway require careful planning and timing. Given the level of agreement that has already been reached between the EA and Network Rail as to the form that the drainage works should take, I consider it appropriate that the EA should be expected to determine any subsequent application to it for approval of details of the works within the prescribed period, and for potential for delay to the Scheme through a failure to do so to be avoided. [201, 204]

304. I conclude that the wording of the disputed protective provision clause should remain as proposed in the submitted draft Order.

Overall Conclusions

305. In reaching my conclusions I have taken into account the Environmental Statement and the environmental information submitted. I have concluded above on the matters particularly identified by the Secretary of State. Overall, I conclude that the Order is justified on its merits and that there is a compelling case in the public interest for making it.

306. The Scheme accords with planning and transport policy at all levels, and there is general acceptance of the need for the dive under. The Scheme is a key part of the Connectivity Fund programme, and as such would help to deliver clear public benefits that would far outweigh the minor residual environmental effects after identified mitigation is taken into account and the limited private losses. The proposed development accords with the development plan and is consistent with the NPPF. There are no considerations which indicate a determination other than in accordance with the development plan in relation to the deemed planning permission direction sought.

307. Funding is available for the scheme and there is no evidence of any impediments to its timely implementation. Amendments to the draft Order submitted with the application have been proposed to improve clarity, provide consistency and to reflect recent legislative and regulatory provisions; these have not been disputed and appear to be reasonable. [19, 34]

308. In the light of all of the above, I conclude that the Order as modified should be made and that the deemed planning permission sought should be granted, subject to appropriate conditions as identified earlier.

Recommendations

309. I recommend that:

- (a) The Network Rail (Werrington Grade Separation) Order 201[x] be made, subject to the modifications as incorporated in the revised draft Order and accompanying amended Order Plan sheet 02 at Documents INQ/NR/15 and INQ/NR/12.
- (b) A Direction be made granting deemed planning permission for the works authorised by the Order, subject to the conditions set out in the Annex to this report.

Alwyn B Nixon

Inspector