
STATUTORY INSTRUMENTS

2015 No. 129

**The A160/A180 (Port of Immingham
Improvement) Development Consent Order 2015**

PART 5

POWERS OF ACQUISITION

Temporary use of land for carrying out the authorised development

28.—(1) The Secretary of State may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) 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 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 permanent works specified in relation to that land in column (3) of Schedule 7, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the Secretary of State must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Secretary of State 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) but excluding plots with reference numbers 1/1t, 1/1w, 1/1y, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5e, 2/5i, 2/5j, 2/6a, 2/6c, 2/7b, 2/7d, 2/7f, 2/7g, 2/8a, 4/1d, 4/1g and 4/1j, 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 (4) of Schedule 7;
- (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 Secretary of State 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; or

- (c) in the case of the plots with reference numbers 1/1t, 1/1w, 1/1y, 1/1ag, 1/1ah, 1/1ak, 2/2b, 2/2c, 2/2e, 2/2f, 2/5a, 2/5c, 2/5d, 2/5e, 2/5i, 2/5j, 2/6a, 2/6c, 2/7b, 2/7d, 2/7f, 2/7g, 2/8a, 4/1d, 4/1g and 4/1j, after the new rights have been created under article 22 (compulsory acquisition of rights).
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Secretary of State must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Secretary of State 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 Secretary of State 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) 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).
- (8) The Secretary of State may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the Secretary of State is not precluded from—
- (a) acquiring new rights over any part of that land under article 22; or
 - (b) acquiring any part of the subsoil of or air-space over (or rights in the subsoil of or air-space over) that land under article 25 (acquisition of subsoil or air-space only).
- (9) Where the Secretary of State takes possession of land under this article, the Secretary of State is not required to acquire the land or any interest in it.
- (10) Section 13 (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.
- (11) Paragraph (1)(a)(ii) does not authorise the Secretary of State to take temporary possession of any land which the Secretary of State is not authorised to acquire under article 19 (compulsory acquisition of land) or article 22.