
STATUTORY INSTRUMENTS

2020 No. 1075

The Great Yarmouth Third River Crossing
Development Consent Order 2020

PART 7

MISCELLANEOUS AND GENERAL

Felling or lopping of trees

53.—(1) The undertaker may fell or lop any tree or shrub near, within or overhanging any part of the authorised development, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, operation or maintenance of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause 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 (determination of questions of disputed compensation) of the 1961 Act.

Trees subject to tree preservation order or within conservation area

54.—(1) The undertaker may fell or lop any tree described in columns (1) and (2) of Schedule 12 (trees subject to tree preservation orders and within conservation areas), cut back its roots or undertake such other works described in column (3) of that Schedule, if it reasonably believes it to be necessary to do so to prevent the tree—

- (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 not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity.

(3) Where works to a tree are authorised by paragraph (1) and a tree preservation order is in force in relation to that tree—

- (a) written consent for the works is deemed to have been granted by a local planning authority having functions under the order;

- (b) the duty imposed by section 206(1)(1) (replacement of trees) of the 1990 Act does not apply; and
 - (c) for the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(2), any felling comprised in the works is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.
- (4) 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.

Removal of human remains

55.—(1) In this article “the specified land” means any land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (12), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the specified land; and
- (b) displaying a notice in a conspicuous place at or near to the location of the human remains.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to Great Yarmouth Borough Council.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;

(1) Section 206(1) was amended by paragraph 11 of Schedule 8 to the 2008 Act.

(2) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice by the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to Great Yarmouth Borough Council.

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for directions from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article—

- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
- (b) references to a personal representative of the deceased are to a person or persons who—
 - (i) is the lawful executor of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.

(15) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(16) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(17) Section 25 (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) of the Burial Act 1857⁽³⁾ is not to apply to a removal carried out in accordance with this article.

(18) Section 239 (use and development of burial grounds) of the 1990 Act applies in relation to any land or right over land acquired for the purposes of the authorised development (whether or not by agreement) and to the temporary use of land under articles 35 (temporary use of land for constructing the authorised development) or 36 (temporary use of land for maintaining the authorised development), as if—

- (a) the reference to a relevant acquisition or appropriation in section 239(1) was a reference to acquisition for the purposes of the authorised development (whether or not by agreement) or temporary use under articles 35 or 36;
- (b) the reference in section 239(1)(b) to use by any person in any manner in accordance with planning permission was a reference to use by the undertaker in any manner in accordance with the provisions of this Order; and
- (c) the reference to prescribed requirements in section 239(2) was a reference to the requirements of paragraphs (2) to (16) of this article.

(19) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950⁽⁴⁾ do not apply to the authorised development.

Deemed marine licence

56. The undertaker is deemed to have been granted a marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the licensable marine activities specified in Part 1 of Schedule 13 (deemed marine licence), subject to the conditions set out in Part 2 of that Schedule (which are deemed to have been attached to the licence under Part 4 of the 2009 Act).

Application of landlord and tenant law

57.—(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

(3) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).

(4) S.I. 1950/792.

- (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 1990 Act

58. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land for the purposes of that Act) of the 1990 Act.

Planning permission

59. If planning permission is granted under the 1990 Act after this Order comes into force for development which is wholly, or partly within, the Order limits and—

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

then the construction, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Undertaker's highway, road traffic and planning functions

60. Except as expressly provided, nothing in this Order is to prejudice the rights, powers and duties of the undertaker under the 1980 Act, the 1984 Act, the 1990 Act and the 1991 Act in relation to the highways constructed as part of the authorised development.

Defence to proceedings in respect of statutory nuisance

61.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽⁵⁾ 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 construction or maintenance of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽⁶⁾; 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

(5) 1990 c. 43. There are amendments that are not relevant to this Order.

(6) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43) and by Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments that are not relevant to this Order.

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.

Protective provisions

62. Schedule 14 (protective provisions) has effect.

Saving for Trinity House

63. Nothing in this Order prejudices or derogates from any of the rights, duties, or privileges of Trinity House.

Certification of plans, etc.

64.—(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 15 (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 15 (documents to be certified) requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the document required to be submitted for certification under paragraph (1).

(3) A plan or document certified in accordance with paragraphs (1) and (2) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) The undertaker must, following certification of the plans and documents in accordance with paragraphs (1) and (2), make those plans and documents available in electronic form for inspection by members of the public for a period of at least 5 years commencing with the date of certification.

Service of notices

65.—(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
- (c) with the consent of the recipient and subject to paragraphs (6) to (9) 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) Where the person on whom a notice or other document to be served for the purposes of this Order is a partnership, the notice or document is duly served if it is served on a partner or a person who has the control or management of the partnership business.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(7) 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—

(7) 1978 c. 30.

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body;
 - (b) in the case of a partner of a partnership or a person having the control or management of the partnership business, the address of the principal office of the partnership; and
 - (c) in any other case, the last known address of that person at the time of service.
- (5) 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.
- (6) 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 is to 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.
- (7) 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 must provide such a copy as soon as reasonably practicable.
- (8) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (9).
- (9) 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 is final and takes 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.
- (10) This article does not exclude the employment of any method of service not expressly provided for by it.
- (11) 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.

Consents, agreements and approvals

66.—(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application 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 received, the relevant authority is deemed to have given its consent, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 10 (street works), 12 (construction and maintenance of new, altered or diverted streets and other structures), 15 (temporary stopping up and restriction of use of streets), 16 (access to works), 20 (discharge of water) and 22 (authority to survey and investigate land); and

“relevant authority” means the authority or other person by whom the application is to be determined.

Arbitration

67.—(1) 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 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.

(2) Paragraph (1) does not apply to any decision, difference, determination, approval or permission required by or under any provision of the deemed marine licence in Schedule 13.