

SCHEDULES

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“completed” in relation to a relevant part of the authorised development means the relevant part of the authorised development is completed and fully open to traffic and “completion” is to be construed accordingly;

“contaminated land” has the same meaning as in section 78A (preliminary) of the Environmental Protection Act 1990(1);

“European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(2);

“Ground Investigation Report” means the document of that description certified by the Secretary of State as the Ground Investigation Report for the purposes of this Order;

“HEMP” means the Handover Environmental Management Plan;

“LEMP” means the Landscape and Ecology Management and Monitoring Plan;

“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;

“nationally protected species” means any species protected under the Wildlife and Countryside Act 1981(3);

“Outline Arboricultural Method Statement” means the document of that description certified by the Secretary of State as the Outline Arboricultural Method Statement for the purposes of this Order;

“Outline CEMP” means the document of that description certified by the Secretary of State as the Outline Construction Environmental Management Plan for the purposes of this Order;

“Outline Archaeological Management Plan” means the document of that description certified by the Secretary of State as the Outline Archaeological Management Plan for the purposes of this Order;

(1) 1990 c. 43. Section 78A was inserted by section 57 of the Environment Act 1995 (c. 25) and amended by section 86(2) of the Water Act 2003 (c. 37).

(2) S.I. 2017/1012.

(3) 1981 c. 69.

Status: This is the original version (as it was originally made).

“Outline LEMP” means the document of that description certified by the Secretary of State as the Outline Landscape and Ecology Management and Monitoring Plan for the purposes of this Order;

“Outline Traffic Management Plan” means the document of that description certified by the Secretary of State as the Outline Traffic Management Plan for the purposes of this Order;

“Preliminary Environmental Design” means the document of that description certified by the Secretary of State as the Preliminary Environmental Design for the purposes of this Order; and

“REAC” means the document of that description certified by the Secretary of State as the Register of Environmental Actions and Commitments for the purposes of this Order.

Time limits

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

3.—(1) The authorised development must be designed in detail and carried out so that it is compatible with the preliminary scheme design shown on the engineering drawings and sections and the report mentioned in sub-paragraph (3), unless otherwise agreed in writing by the Secretary of State, provided that the Secretary of State is satisfied that any amendments to the engineering drawings and sections showing departures from the preliminary scheme design (arising from the report or otherwise) 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 online for inspection by members of the public.

(3) The report mentioned in sub-paragraph (1), is a report to be prepared by the undertaker of its findings following a review of the design of the bridges and structures of the authorised development; the review to be carried out in consultation with the relevant planning authority and the relevant highway authority.

Construction Environmental Management Plan

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

(2) The CEMP must be written in accordance with ISO14001 and, so far as is relevant to that part of the authorised development, must be in accordance with the relevant mitigation measures set out in the REAC, and must include the following management plans—

- (a) pollution prevention plan;
- (b) dust noise and nuisance management plan;
- (c) ecological habitats and species plan;
- (d) invasive species management plan;
- (e) surface water management plan;
- (f) contaminated land management plan;

- (g) soil handling management plan;
- (h) material management plan;
- (i) site waste management plan;
- (j) material, waste storage and refuelling plan;
- (k) energy and resource use management plan;
- (l) emergency response plan; and
- (m) community engagement 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 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 and LEMP which set 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 by the undertaker with the relevant planning authority, relevant highway authority and the Environment Agency on matters related to its functions.

(2) The landscaping scheme and LEMP must be in accordance with the relevant mitigation measures set out in the REAC and with the Preliminary Environmental Design and the Outline LEMP.

(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;
- (e) implementation timetables for all landscaping works; and
- (f) measures for the replacement, in the first available planting season, of any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after the completion of the part of the authorised development to which the relevant landscaping scheme relates, dies, becomes seriously diseased or is seriously damaged.

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

Contaminated land and groundwater

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 or in the Ground Investigation Report, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning authority, relevant highway 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.

Status: This is the original version (as it was originally made).

(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 by the undertaker 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

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 relevant works, 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 a 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 by the undertaker with Natural England, and under any necessary licences.

Surface and foul water drainage

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, in accordance with the relevant 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 by the undertaker with the relevant planning authority and relevant highway 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 by the undertaker with the relevant planning authority on matters related to its function, and 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

9.—(1) No part of the authorised development is to commence until an archaeological management plan has been submitted to and approved in writing by the Secretary of State, following

consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The archaeological management plan must be in accordance with the Outline Archaeological Management Plan and reflect the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved archaeological management plan referred to in sub-paragraph (1).

Traffic management

10.—(1) No part of the authorised development comprising the construction, alteration or improvement of the M25 or A12 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 by the undertaker with the relevant highway authority on matters related to its function.

(2) The traffic management plan prepared under sub-paragraph (1) must be in accordance with the Outline Traffic Management Plan and the relevant mitigation measures set out in the REAC.

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

Trees

11.—(1) No part of the authorised development is to commence until an arboricultural method statement has been submitted to and approved in writing by the Secretary of State, following consultation by the undertaker with the relevant planning authority to the extent that it relates to matters relevant to its functions.

(2) The arboricultural method statement must be in accordance with the Outline Arboricultural Method Statement and the relevant mitigation measures set out in the REAC.

(3) The authorised development must be carried out in accordance with the approved arboricultural method statement referred to in sub-paragraph (1).

Approvals and amendments to approved details

12. 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

13.—(1) Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with Manual of Contract Documents for Highway Works maintained by or on behalf for the undertaker except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development, following consultation by the undertaker with the relevant highways authority to the extent that it relates to matters relevant to its function.

(2) No part of the new loop road forming Work No. 6 or the new A12 eastbound off-slip forming Work No. 2 is to be opened for traffic until any appropriate measures for the control of deer, including deer fencing, identified following consultation with the relevant planning authority and relevant highway authority on matters related to its function has been installed.

Operation of M25 Junction 28 Roundabout

14.—(1) No part of the new loop road forming Work No. 6 is to be opened for traffic until a plan for the M25 Junction 28 roundabout containing details of the proposed operation of traffic signal timings or such other related measures as may be reasonably practicable to prevent any increase in delays for traffic on the A1023 Brook Street entering the M25 Junction 28 roundabout arising as a result of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the highway authorities within the Order limits.

(2) The authorised development must be operated in accordance with the approved plan referred to in sub-paragraph (1) or such amended plan following consultation with the highway authorities within the Order limits.

Maylands Golf Course accommodation works

15. Accommodation works to provide replacement facilities for Maylands Golf Course forming Work No. 32 must be undertaken and available for use prior to the opening to traffic of the new loop road forming Work No. 6.

Grove Farm

16.—(1) No part of the authorised development is to commence until a site-specific plan for Grove Farm has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and the London Borough of Havering.

(2) The site-specific plan must include:

- (a) details of the planting, visual screen to be installed, and any other mitigation deemed necessary for the boundary to the new A12 eastbound off-slip forming Work No. 2; and
- (b) details of the egress route forming Work No. 15 onto the new A12 eastbound off-slip forming Work No. 2.

(3) The authorised development must be constructed in accordance with the site-specific plan referred to in sub-paragraph (1).

Non-motorised users' route

17. No part of the new loop road forming Work No. 6 may be opened for traffic until:

- (a) a scheme or agreement to secure the full non-motorised users' route between Harold Hill and Brentwood has been submitted to and approved in writing by the Secretary of State in consultation with the relevant highway authorities and relevant planning authorities; and
- (b) the junction section of the non-motorised users' route within the Order limits has been delivered.

Code of construction practice

18.—(1) No part of the authorised development may commence until a code of construction practice has been submitted to and approved in writing by the Secretary of State in consultation with Transport for London and the relevant planning authorities.

(2) The authorised development must be carried out in accordance with the approved code of construction practice.

Gardens of Peace Muslim Cemetery

19.—(1) No part of Work No. 29 is to commence within plot nos. 1/8a and 1/8 until a site-specific construction plan has been submitted to and approved in writing by the Secretary of State following consultation with the Gardens of Peace Muslim Cemetery and Cadent.

(2) Work No. 29 within plot nos. 1/8a and 1/8 must be constructed in accordance with the approved site-specific plan referred to in sub-paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

20.—(1) 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 21 (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

21.—(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.

(3) In the event that the Secretary of State does not give such notification within that 21 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.

Status: This is the original version (as it was originally made).

(4) 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 20 (applications made under requirements) and in this paragraph.

(5) 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⁽⁴⁾.

Register of requirements

22.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in a form suitable for inspection by members of the public an online register of the documents to be certified under Schedule 10 and 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.

Anticipatory steps towards compliance with any requirement

23. 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.

Details of consultation

24. In relation to any provision of this Schedule requiring details to be submitted to the Secretary of State for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 42 days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker’s response to those representations.

(4) 1971 c. 80.