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STATUTORY INSTRUMENTS

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**2007 No. 2980**

**The Flood Defence (Mimmshall Brook Works) Order 2007**

**Citation and commencement**

1. This Order may be cited as the Flood Defence (Mimmshall Brook Works) Order 2007 and shall come into operation on 1st November 2007.

**Interpretation**

2.—(1) In this Order—

“the 1984 Act” means the Road Traffic Regulation Act 1984<sup>(1)</sup>;

“the Agency” means the Environment Agency;

“the authorised works” means the works specified in article 5 of this Order;

“the deposited plans” means the plans of which copies have been certified by the Secretary of State for Environment, Food and Rural Affairs as the deposited plans for the purposes of this Order and of which one copy has been deposited at the offices of the Agency at King’s Meadow House, King’s Meadow Road, Reading, RG1 8DQ;

“Dixons Hill Road” means the public highway known as Dixons Hill Road shown on the deposited plans;

“the flood gates” means the flood gate or gates comprised in the authorised works;

“Hawkshead Lane” means the public highway known as Hawkshead Lane shown on the deposited plans;

“highway authority” has the same meaning as in the Highways Act 1980<sup>(2)</sup>;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“the road closure barriers” means the road closure barrier or barriers and other road closure apparatus comprised in the authorised works;

“Station Road” means the public highway known as Station Road shown on the deposited plans;

“Swanland Road” means the public highway known as Swanland Road shown on the deposited plans;

“traffic authority” has the same meaning as in the 1984 Act;

“Warrengate Road” means the public highway known as Warrengate Road shown on the deposited plans and includes the unnamed road to the west joining Swanland Road;

“Weight Restriction Order” means the District of Welwyn Hatfield (Various Roads, Welham Green) (Weight Restriction) Order 1980 as amended by the District of Welwyn Hatfield (Various Roads -Weight Restrictions)(Amendments and Consolidation) Order 1985; and

“Work No.” followed by a number means the works so described in article 5.

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(1) 1984 c. 27.

(2) 1980 c. 66.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

### **Power to acquire land**

3. The Agency may acquire compulsorily the land described in the table at Part 1 of the Schedule and shown on the deposited plans, or interests in and rights over the land (whether by the acquisition of existing interests and rights or by the creation of new interests and rights), for the purpose of or in connection with the Works described in article 5.

### **Temporary use of land for construction of works**

4.—(1) The Agency may, in connection with the execution of the authorised works—

- (a) enter upon and take temporary possession of the land described in the table at Part 2 of the Schedule and shown on the deposited plans within the limits of land subject to temporary use for the purposes given in the second column of the table;
- (b) remove any structure or vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and structures on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Agency shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Agency may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of 2 years beginning with the date of completion of the operations specified in paragraph (1)(a).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Agency shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Agency shall not be required to replace a structure removed under this article, or remove a permanent structure authorised by this Order.

(5) The Agency shall 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.

(6) Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(3).

(7) Without prejudice to article 10, nothing in this article shall affect any liability to pay compensation under section 10(2) of the Compulsory Purchase Act 1965(4) 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 (5).

(8) Where the Agency takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(9) In this article “structure” includes any erection.

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(3) 1961 c. 33.

(4) 1965 c. 56.

## **Execution of works**

5.—(1) The Agency may construct and maintain within the limits shown on the deposited plans the following works together with any necessary works or conveniences required in connection with them—

Work No.1 — A flood defence structure consisting of a sill in and flood gates that can be closed across Warrengate Road and associated structures.

Work No.2 — A raising of part of Warrengate Road between point TL231036 and TL231034 and the construction of a flood defence bund to the west of that part of Warrengate Road.

Work No.3 — A compensatory environmental area of 4643 square metres to the south of Work No.1.

Work No.4 — Road closure barriers on Warrengate Road and the unnamed road to the west of Hawkshead Lane and a turning head on Hawkshead Lane.

(2) Work No.1 includes altering the level of part of Warrengate Road but the Agency shall ensure that, when Warrengate Road is not closed under article 6, no part of the carriageway of Warrengate Road is obstructed by the work.

(3) Section 153 of the Public Health Act 1875<sup>(5)</sup> (power to require apparatus to be moved) applies for the purposes of paragraph (1) as it applies for the purposes of that Act except to the extent, if any, that the works are regulated by the provisions of Part III of the New Roads and Street Works Act 1991<sup>(6)</sup>.

## **Temporary closure of Warrengate Road and Hawkshead Lane during execution of works**

6.—(1) The Agency shall, during and for the purposes of the execution or maintenance of the authorised works, temporarily close Warrengate Road and Hawkshead Lane and may at any time and for such period as it considers reasonably necessary to do so—

(a) divert the traffic from the above roads; and

(b) subject to paragraph (2), prevent all persons from passing along the above roads.

(2) The Agency shall provide at all times reasonable access for pedestrians going to or from premises abutting Warrengate Road and Hawkshead Lane insofar as they are affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Agency shall not exercise the powers of this article without first obtaining the consent of the highway authority, such consent not to be unreasonably withheld.

## **Temporary closure of Warrengate Road and Hawkshead Lane and interference with flood water during operation of the flood gates**

7.—(1) The Agency shall, during and for the purposes set out in paragraph (2), temporarily close Warrengate Road and Hawkshead Lane and may at any time and for such period as it considers reasonably necessary to do so—

(a) divert the traffic from the above roads; and

(b) subject to paragraph (4), obstruct the public right of way on Warrengate Road by closing the flood gates or road closure barriers, or on Hawkshead Lane by placing traffic cones or other similar moveable closure apparatus on the carriageway.

(2) The purposes referred to in paragraph (1) are—

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<sup>(5)</sup> 1875 c. 55.

<sup>(6)</sup> 1991 c. 22.

(a) to test the operation of the flood gates or road closure barriers, carry out maintenance or to train any person in their operation; and

(b) to operate the flood gates or road closure barriers in the interests of flood defence.

(3) Without prejudice to the application of Chapter II of Part II of the Water Resources Act 1991 the Agency may by means of closing the flood gates intercept, divert or otherwise interfere with any flood water.

(4) The Agency shall provide at all times reasonable access for pedestrians going to or from premises abutting Warrengate Road and Hawkshead Lane insofar as they are affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(5) The Agency—

(a) shall not exercise the powers of article 7(2)(a) without first obtaining the consent of the highway authority, such consent not to be unreasonably withheld; and

(b) shall inform the highway authority as soon as reasonably practicable after exercising the powers of article 7(2)(b).

(c) In exercising its powers under this article, the Agency shall keep inconvenience and disruption to the public to the minimum possible consistent with the proper operation and maintenance of the flood gates in the interests of flood defence.

#### **Weight restriction on Dixons Hill Road and Station Road**

8. Where traffic is diverted under articles 6(1)(a) and 7(1)(a), the environmental weight restrictions on Dixons Hill Road and Station Road specified in the Weight Restriction Order shall not apply.

#### **Traffic signs**

9.—(1) The Agency may for the purposes mentioned in articles 6 and 7 place or maintain on Warrengate Road and any street which gives access to it, or any other street with the agreement of the traffic authority, traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State.

(2) The Agency—

(a) shall consult with the traffic authority as to the placing of signs; and

(b) unless the traffic authority is unwilling or agrees not to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the Agency as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(4) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

#### **No double recovery**

10. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

### **Arbitration**

11. Unless otherwise agreed between the parties, any difference between the Agency and the highway authority under article 5(3) shall 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 notice in writing to the other) by the President for the time being of the Institute of Civil Engineers.

### **For the protection of the highway authority**

12.—(1) If no arrangement is made under article 9(2)(b) then the Agency shall be responsible for the installation and maintenance of any traffic signs that are placed in exercise of the powers of article 9.

(2) The operation of this Order will have no permanent effect on any highways referred to in it nor will it change the status of any such highway.

*David Richardson*  
A Senior Civil Servant, for and on behalf of the  
Secretary of State for Environment, Food and  
Rural Affairs

12th October 2007

**Changes to legislation:**

There are currently no known outstanding effects for the The Flood Defence (Mimmshall Brook Works) Order 2007.