
STATUTORY INSTRUMENTS

2013 No. 198

The Crossrail (Kensal Green) Order 2013

PART 3

MISCELLANEOUS AND GENERAL

Planning permission

13. Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land of the purposes of that Act).

Modification of provisions in agreement and deed of grant relating to Canal Way

- 14.**—(1) The modifications specified in paragraph (2) have effect with respect to—
- (a) an agreement between the Secretary of State for Transport, Cross London Rail Links Limited and Fortress Limited dated 1st July 2008; and
 - (b) a deed of grant relating to Plot 3, Canal Way, Royal Borough of Kensington and Chelsea between Fortress Limited and Transport for London.
- (2) The modifications referred to in paragraph (1) are—
- (a) references in the agreement and the deed of grant to “authorised works” include the works authorised by this Order; and
 - (b) all obligations in the agreement and the deed of grant to construct the Alternative Access Route cease to have effect.
- (3) In this article, “Alternative Access Route” has the meaning given to it in the agreement referred to in paragraph (1)(a).

Defence to proceedings in respect of statutory nuisance

15.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (1) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within sub-paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out 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 site) or 65 (noise exceeding registered level) of the Control of Pollution Act 1974(2); or

- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) 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 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Obstruction of construction of authorised works

16. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in carrying out any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

is guilty of any offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Statutory undertakers, etc.

17. The provisions of Schedule 3 (provisions relating to statutory undertakers, etc.) have effect.

Certification of plan, etc.

18. The undertaker must, as soon as practicable after the making of this Order, submit copies of the book of reference and the works and land plan to the Secretary of State for certification that they are, respectively, true copies of the book of reference and the plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

19.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) 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) For the purposes of section 7 of the Interpretation Act 1978(3) 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—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address at the time of service.

(4) 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 of that person or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by 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.

(5) 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 taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) 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 any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) 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.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

21. Any difference under any provision of this Order, unless otherwise provided for, 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.