

SCHEDULES

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“Airport safeguarding zone” means land as shown on the safeguarding map issued for the purposes of the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002 and certified by the Civil Aviation Authority as the safeguarding map for Birmingham Airport;

“Birmingham Airport” means the civil aerodrome authorised to operate under certificate reference UK: EGBB – 001;

“Birmingham Airport Limited” means Company No. 02078273 of Diamond House, Birmingham Airport, Birmingham B26 3QJ;

“CEMP” means the construction environmental management plan;

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

“Ecological Clerk of Works” has the meaning given in the OEMP;

“HEMP” means the handover environmental management plan;

“the Manual of Contract Documents for Highway Works” means the document of that name published electronically by the strategic highway authorities for England, Scotland, Wales and Northern Ireland, or any equivalent replacement published for that document;

“OEMP” means the outline environmental management plan referred to in Schedule 13 (documents to be certified) certified by the Secretary of State as the outline environmental management plan for the purposes of this Order; and

“REAC” means the register of environmental actions and commitments set out in section 3 of the OEMP.

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.

(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.

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 general arrangement plans, works plans and the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority and local highway authority on matters related to their functions and provided that the Secretary of State is satisfied that any amendments to the general arrangement plans, works plans and the engineering drawings and sections showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) The Secretary of State must not approve any amended details under sub-paragraph (1) that exceed the maximum vertical limits of deviation shown on the works plans and on the engineering drawings and sections within the Airport safeguarding zone, unless the Secretary of State, following consultation with Birmingham Airport Limited, is satisfied that a deviation in excess of those limits would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport or result in significant operational limitations being imposed on Birmingham Airport.

(3) Where amended details are approved by the Secretary of State under sub-paragraph (1), those details are deemed to be substituted for the corresponding general arrangement plans, works plans or engineering drawings and sections and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Outline Environmental Management Plan

4.—(1) The authorised development must be carried out in accordance with the OEMP.

(2) The undertaker must make the CEMP and the HEMP produced in accordance with the OEMP available in an electronic form suitable for inspection by members of the public.

(3) The CEMP must be written in accordance with ISO14001 and must—

- (a) reflect the mitigation measures set out in the REAC;
- (b) contain a record of all sensitive environmental features that have the potential to be affected by the construction of the proposed development;
- (c) require adherence to any working hours set out in the REAC or, where no such hours are set, to working hours of 07:00–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge and gantry demolition and installation;
 - (ii) night-time lifting operations;
 - (iii) site clearance of vegetation adjacent to live carriageways;
 - (iv) site clearance of signs, street furniture and lighting column adjacent to live carriageways;
 - (v) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (vi) junction and highway tie-in works;
 - (vii) installation of temporary and permanent line markings;
 - (viii) installation of detector loops within the M42 carriageway;
 - (ix) removal of overhead power lines;
 - (x) overnight traffic management measures;

- (xi) any emergency works;
 - (xii) work associated with the diversion of existing utilities;
 - (xiii) works associated with traffic management and signal changes; and
 - (xiv) as otherwise agreed by the local authority in advance;
- (d) include the following management plans—
- (i) Dust, Noise and Nuisance Management Plan;
 - (ii) Site Waste Management Plan;
 - (iii) Environmental Control Plan: Invasive Species;
 - (iv) Environmental Control Plan: General Ecology;
 - (v) Soil Management Plan;
 - (vi) Surface Water Management Plan;
 - (vii) Control Of Substances Hazardous to Health, Material, Waste Storage and Refuelling Plan;
 - (viii) Energy and Resource Use Management Plan;
 - (ix) Materials Management Plan;
 - (x) Contaminated Land Management Plan;
 - (xi) Archaeological Control Plan;
 - (xii) Pollution Prevention Plan;
 - (xiii) Bird Strike Management Plan;
 - (xiv) Crane Management Plan;
 - (xv) Biodiversity Management Plan; and
 - (xvi) Compound Management Plan.

(4) No part of the authorised development is to commence until a CEMP, substantially in accordance with the OEMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, Birmingham Airport Limited or Natural England to the extent that it relates to matters relevant to its function.

(5) The construction of the authorised development must be carried out in accordance with the approved CEMP.

(6) A HEMP must be developed and completed by the end of construction, commissioning and handover stage of the authorised development, in accordance with the process set out in the approved CEMP.

(7) The HEMP must address the matters set out in the approved CEMP that are relevant to the operation and maintenance of the authorised development, and must contain—

- (a) the environmental information needed for the future maintenance and operation of the authorised development;
- (b) the long-term commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued long-term effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of the authorised development; and
- (c) a record of the consents, commitments and permissions resulting from liaison with statutory bodies.

(8) The authorised development must be operated and maintained in accordance with the HEMP.

Landscaping

5.—(1) No part of the authorised development is to commence until a landscaping scheme applicable to that part has been submitted to and approved in writing by the Secretary of State, following consultation with—

- (a) the relevant planning authority on matters related to its functions; and
- (b) where that part of the authorised development is comprised in the Airport safeguarding zone, Birmingham Airport Limited on matters relevant to the safety of aircraft taking off or landing, or flying in the vicinity of, Birmingham Airport.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the proposed landscape planting strategy (figure 8.3) and the illustrative environmental masterplan (figure 8.8) annexed to the environmental statement (application document TR010027/APP/6.1).

- (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; and
 - (e) implementation timetables for all landscaping works.

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

(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.

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, it must be reported as soon as reasonably practicable to the Secretary of State, the relevant planning 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.

(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 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) In the event that any protected species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works (ECoW).

(2) The relevant parts of the relevant works must not recommence until a written scheme of protection and mitigation measures (including their design and management) has been submitted to and approved in writing by the Secretary of State after consultation with Natural England.

(3) The written scheme must provide for the implementation of appropriate measures to avoid harm to breeding birds and their nests under the supervision of the ECoW.

(4) The undertaker must implement the written scheme prepared under sub-paragraph (2) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigation measures to be implemented.

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, reflecting the mitigation measures set out in the REAC and drainage strategy report including means of pollution control, have been submitted and approved in writing by the Secretary of State following consultation with the relevant planning 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 with—

- (a) the relevant planning authority on matters related to its function; and
- (b) where the part of the authorised development to which the approved details relate is within the Airport safeguarding zone, Birmingham Airport Limited.

(3) The Secretary of State may only agree to amendments to the approved details under sub-paragraph (2) if the Secretary of State is satisfied that—

- (a) the amendments would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; or
- (b) in a case where Birmingham Airport Limited has been consulted under sub-paragraph (2) (b), the amendments would not adversely affect the safety of aircraft taking off or landing at, or flying in the vicinity of, Birmingham Airport.

Archaeological remains

9.—(1) No part of the authorised development is to commence until for that part a written scheme for the investigation of areas of potential archaeological interest has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.

(2) The authorised development must be carried out in accordance with the scheme referred to in sub-paragraph (1).

Traffic management

10.—(1) No part of the authorised development 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 with the relevant planning authority on matters related to its function and the Royal Mail.

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

Amendments to approved details

11. 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

12. Any permanent and temporary fencing and other means of enclosure for the authorised development must be constructed and installed in accordance with the Manual of Contract Documents for Highway Works except where any departures from that manual are agreed in writing by the Secretary of State in connection with the authorised development.

Bickenhill Meadows SSSI

13.—(1) No part of the authorised development that affects Bickenhill Meadows SSSI is to commence until a detailed Bickenhill Meadows SSSI Monitoring Management Plan has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and Natural England on matters related to its function.

(2) The detailed Bickenhill Meadows SSSI Monitoring Management Plan must set out—

- (a) the requirements for the overarching biological and hydrological monitoring programme,
- (b) details of the establishment and role of the SSSI Monitoring Steering Group, and
- (c) details of trigger points and action measures which must be taken in the event that the trigger points are met or exceeded.

(3) Monitoring of Bickenhill Meadows SSSI must be carried out in accordance with the detailed Bickenhill Meadows SSSI Monitoring Management Plan.

(4) Work No. 76 can only be carried out if it has been determined, in accordance with the Bickenhill Meadows SSSI Monitoring Management Plan, that the passive solution to mitigate the loss of surface water catchment area has failed.

Relocation of Work No. 35 underground storage tank and access

14.—(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 13 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until an amended scheme for the underground storage tank and associated access (Work No.35) is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function and the occupiers of those properties affected by the change.

(2) Unless otherwise agreed in writing by the Secretary of State, the amended scheme must provide for the relocation of the underground storage tank and access from the northern to the southern side of St Peter's Lane.

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

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

15.—(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 16 (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 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

16.—(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. In the event that the Secretary of State does not give such notification within that 21 business 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.

(3) 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 15 (applications made under requirements) and in this paragraph.

(4) 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.

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

Register of requirements

17.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of 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

18. 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.