

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the administration area of Sunderland, South Tyneside, or both Sunderland & South Tyneside.

A nationally significant infrastructure project as defined in sections 14 and 22 of the 2008 Act, and associated development as defined in section 115 of the 2008 Act, comprising—

Work No. 1 – The construction of a new private means of access 960m in length that links the A1290 with the new drainage attenuation ponds (Work Nos. 2 and 18), and the fields to the south of the junction (Plots 1/3a and 1/5b), as shown between points 1/1, 1/27, 1/28 and 1/29 on the Streets, Rights of Way and Access Plans.

Work No. 2 – The construction of a new drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 2 is adjacent to the existing A19, 50m north of Washington Road footbridge and accessed via a new private means of access (Work No. 1).

Work No. 3 – The stopping up and removal of an existing A19 layby as shown between points 1/A and 1/B on the Streets, Rights of Way and Access Plans, the construction of a new edge of carriageway for the A19 mainline including drainage works, and the construction of a new northbound off-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 3 is 625m in length that originates at the existing A19 dual carriageway and terminates at the proposed Downhill Lane circulatory carriageway (Work No. 7), as shown between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans.

Work No. 4 – The construction of drainage features and the reinstatement of barrier in the existing mainline A19 central reserve as shown between points 1/2 and 1/6 on the Streets, Rights of Way and Access Plans.

Work No. 5 – The construction of a new southbound on-slip and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 5 is 640m in length that originates at the proposed Downhill Lane circulatory carriageway (Work No. 7) and terminates at the existing A19 dual carriageway as shown between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans.

Work No. 6 – The construction of a new shared non-motorised user facility – footway/cycle track 260m in length between a proposed non-motorised user crossing facility on Washington Road (East) and a junction with Work No. 8, as shown between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans.

Work No. 7 – The construction of a new circulatory carriageway, incorporating the existing Downhill Lane overbridge and a new overbridge to the south; including earthworks, abutments and a single span structure, and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 7 is 550m in

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length and will accommodate the new entry/exit links of Work Nos. 3, 5, 9, 10, 19 and 20, and the improved existing entry/exit links of Work Nos. 23 and 24.

Work No. 8 – The construction of a new shared use non-motorised user facility and ancillary works including, but not limited to, embankments, cuttings, roadside furniture, roadside signage, electrical connections and the construction of a multi-span structure with approach ramps. Work No. 8 is 1,110m in length that links to the improved existing Bridleway B46 via a non-motorised user crossing facility on Downhill Lane (East) and the A1290 non-motorised user facilities as shown between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans.

Work No. 9 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 9 is 320m in length, forming the new Washington Road (East), originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Washington Road (East), as shown between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans.

Work No. 10 – The construction of a widened and realigned road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 10 is 115m in length, forming the new Downhill Lane (East) and including a new shared non-motorised user crossing facility; originating at the entry/exit with the new circulatory carriageway (Work No. 7) and tying into the existing Downhill Lane (East), as shown between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans.

Work No. 11 – The construction of a new private means of access linking Downhill Lane (East) with the field to the southeast (Plot 1/7b), as shown at point 1/16 on the Streets, Rights of Way and Access Plans.

Work No. 12 – The construction of a new private means of access 150m in length that links Downhill Lane (East) with the new drainage attenuation pond (Work No. 13) as shown between points 1/17 and 1/20 on the Streets, Rights of Way and Access Plans.

Work No. 13 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 13 is adjacent to the improved Bridleway B46 (Work No. 14), and accessed via a new private means of access (Work No. 12).

Work No. 14 – Improvement to the existing Bridleway B46 for a length of 215m, from the site boundary to the proposed Downhill Lane (East) non-motorised user crossing facility, as shown between points 1/21 and 1/19 on the Streets, Rights of Way and Access Plans.

Work No. 15 – The improvement of the existing A1290 for a length of 50m for the construction of a non-motorised user crossing facility, as shown between points 1/22 and 1/24 on the Streets, Rights of Way and Access Plans.

Work No. 16 – The construction of a new shared use non-motorised user facility 60m in length that links Follingsby Lane and the proposed A1290 non-motorised user crossing facility (Work No. 15), as shown between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans.

Work No. 17 – The construction of new drainage features on the A1290 over a length of 180m, including a replacement carrier pipe under the existing verge and filter drain at the earthwork toe.

Work No. 18 – The construction of a drainage attenuation pond, including, but not limited to, excavations, embankments, cuttings, environmental mitigation, and fencing necessary for its construction and operation. Work No. 18 is adjacent to the proposed A1290 non-motorised user facility (Work No. 8), and accessed via a new private means of access (Work No. 1).

Work No. 19 – The construction of a new road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside

furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 19 is 290m in length, forming the new A1290 westbound carriageway; originating at the new circulatory carriageway (Work No. 7) and merging with the existing single carriageway A1290, as shown between points 1/35 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 20 – The construction of a realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 20 is 290m in length, forming the new A1290 eastbound carriageway; originating at the new circulatory carriageway (Work No. 7) and terminating at the existing single carriageway A1290, as shown between points 1/36 and 1/30 on the Streets, Rights of Way and Access Plans.

Work No. 21 – The construction of a new section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 21 is 115m in length, forming the new Downhill Lane (West); originating at the existing Downhill Lane (West) and terminating at a junction with the proposed eastbound A1290 carriageway (Work No. 20), as shown between points 1/31 and 1/32 on the Streets, Rights of Way and Access Plans.

Work No. 22 – The construction of a new private means of access 55m in length that links the realigned Downhill Lane (West) (Work No. 21) with the existing Make-Me-Rich Farm private means of access, as shown between points 1/33 and 1/34 on the Streets, Rights of Way and Access Plans.

Work No. 23 – The construction of an improved and realigned section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 23 is 135m in length, originating at the new circulatory carriageway (Work No. 7) and terminating on the northbound link to Testo's junction, as shown between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans.

Work No. 24 – The construction of an improved section of road and ancillary works including, but not limited to, embankments, cuttings, alterations to existing pavements and kerbs, road markings, roadside furniture, roadside signage, electrical connections and strengthening works necessary for its operation. Work No. 24 is 140m in length, originating on the southbound link from Testo's junction and terminating at the new circulatory carriageway (Work No. 7), as shown between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans.

Work Nos. 25A, 25B and 25C – The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste. In accordance with article 30 (temporary use of land for construction compound), Work No. 25 will be carried out on either—

- (a) Plots 1/14a and 1/14b, shown on Works Plan Sheet 1 labelled as Work Nos. 25A and 25B; or
- (b) Plots 1/14a, 2/1, 2/2a and 2/2b, shown on Works Plan Sheet 1 and 2 labelled as Work Nos. 25A and 25C.

In connection with the construction of any of these works, further development within the Order limits which does not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement, consisting of—

- (a) alteration of the layout of any street permanently or temporarily, including but not limited to increasing the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street; altering the level or increasing

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- the width of any such kerb, footpath, footway, cycle track or verge; and reducing the width of the carriageway of the street;
- (b) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
 - (c) ramps, means of access, non-motorised links, footpaths, footways, bridleways, cycle tracks and crossing facilities;
 - (d) embankments, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, outfalls, ditches, pollution control devices, wing walls, highway lighting, fencing and culverts;
 - (e) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street;
 - (f) works to place, divert, relocate or maintain the position of apparatus, services, plant and other equipment in a street, or in other land, including mains, sewers, drains, pipes, lights and cables;
 - (g) works to alter the course of, or otherwise interfere with a watercourse;
 - (h) landscaping, noise barriers, works associated with the provision of ecological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
 - (i) works for the benefit or protection of land affected by the authorised development;
 - (j) works to place or maintain road furniture;
 - (k) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths); earthworks (including soil stripping and storage, site levelling);
 - (l) the felling of trees and hedgerows;
 - (m) establishment of site construction compounds, storage areas, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences;
 - (n) the provisions of other works including pavement works, kerbing and paved areas works, signing, signals, gantries, road markings works, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
 - (o) such other works, working sites storage areas, works of demolition or works of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the construction, operation or maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

“contaminated land” has the same meaning as that given in section 78A 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⁾;

“HEMP” means the handover environmental management plan;

“the 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⁾; and

“REAC” means the register of environmental actions and commitments (Appendix 1.3 of the environmental statement, application document TR010024/APP/6.3).

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 in accordance with the preliminary scheme design shown on the engineering drawings and sections unless otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters related to its functions, provided that the Secretary of State is satisfied that any amendments to 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) 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 in electronic form for inspection by members of the public.

(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.

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Construction environmental management plan

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

- (2) 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 working hours of 07:30–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday except for—
 - (i) night-time closures for bridge installation;
 - (ii) any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation;
 - (iii) junction tie-in works;
 - (iv) overnight traffic management measures;
 - (v) cases of emergency; and
 - (vi) 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) COSHH (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.
- (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 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.
- (6) 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 which sets 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 with the relevant planning authority on matters related to its function.

(2) The landscaping scheme must reflect the mitigation measures set out in the REAC and must be based on the illustrative environmental masterplan annexed to the environmental statement (application document TR010024/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 or other recognised codes of good practice.

(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.

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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 authorised development, 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 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 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, reflecting the 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 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 the relevant planning authority on matters related to its function, 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) Any archaeological remains not previously identified which are revealed when carrying out the authorised development must be retained in situ and reported to the relevant planning authority as soon as reasonably practicable from the date they are identified.

(2) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (1) for a period of 14 days from the date of any notice served under sub-paragraph (1) unless otherwise agreed in writing by the relevant planning authority.

(3) If the relevant planning authority determines in writing that the archaeological remains require further investigation, no construction operations are to take place within 10 metres of the remains until provision has been made for the further investigation and recording of the remains in accordance with details to be submitted in writing to, and approved in writing by, the relevant planning authority.

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.

(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 Volume 1, Series 0300 of 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.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

13. 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 14 (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,

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the application is taken to have been refused by the Secretary of State at the end of that period.

Further information

14.—(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 13 (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⁽⁴⁾.

Register of requirements

15.—(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

16. 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.

(4) 1971 c. 80.

SCHEDULE 3

Articles 11 and 15

CLASSIFICATION OF ROADS, ETC.

PART 1

TRUNK ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
A19(T) Northbound Off-slip	Between points 1/4 and 1/8 on the Streets, Rights of Way and Access Plans
A19(T) Northbound Link Road to Testo's junction	Between points 1/37 and 1/38 on the Streets, Rights of Way and Access Plans
A19(T) Southbound Link Road from Testo's junction	Between points 1/40 and 1/39 on the Streets, Rights of Way and Access Plans
A19(T) Southbound On-slip	Between points 1/10 and 1/3 on the Streets, Rights of Way and Access Plans

PART 2

OTHER CLASSIFIED ROADS

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/22 and 1/24 and between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans
Downhill Lane (West)	Between point 1/31 and 1/32 on the Streets, Rights of Way and Access Plans

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PART 3

NON-MOTORISED USER ROUTES

<i>(1)</i> <i>NMU Route</i>	<i>(2)</i> <i>Extent</i>
Non-segregated footway/cycle track	Between points 1/5 and 1/9 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/15 and 1/26 on the Streets, Rights of Way and Access Plans
Non-segregated footway/equestrian/cycle track	Between points 1/23 and 1/25 on the Streets, Rights of Way and Access Plans

PART 4

ROADS SUBJECT TO 40 MILES PER HOUR LIMIT

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>
Downhill Lane Junction circulatory carriageway	Entire circulatory carriageway linking points 1/35, 1/36, 1/37, 1/39, 1/14, 1/13, 1/12, 1/11, 1/10 and 1/8 on the Streets, Rights of Way and Access Plans
A1290	Between points 1/35, 1/36 and 1/30 on the Streets, Rights of Way and Access Plans
Washington Road (East)	Between points 1/11, 1/12 and 1/7 on the Streets, Rights of Way and Access Plans
Downhill Lane (East)	Between points 1/13, 1/14 and 1/18 on the Streets, Rights of Way and Access Plans

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SCHEDULE 4

Article 13

PERMANENT STOPPING UP OF STREETS AND PRIVATE MEANS OF ACCESS

PART 1

STREETS TO BE STOPPED UP FOR WHICH
A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Street to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
A19(T) Northbound Off-slip	Between points 1/D and 1/W on the Streets, Rights of Way and Access Plans	Work No. 3
A19(T) Southbound On-slip	Between points 1/G and 1/C on the Streets, Rights of Way and Access Plans	Work No. 5
A1290	Between points 1/U and 1/X on the Streets, Rights of Way and Access Plans	Work Nos. 19 and 20
Washington Road (East)	Between points 1/E and 1/F on the Streets, Rights of Way and Access Plans	Work No. 9
Washington Road (East)	Between points 1/K and 1/L on the Streets, Rights of Way and Access Plans	Work No. 7
Downhill Lane (West)	Between points 1/T and 1/V on the Streets, Rights of Way and Access Plans	Work Nos. 21 and 22

PART 2

PRIVATE MEANS OF ACCESS TO BE STOPPED UP
FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Private means of access to be stopped up</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New private means of access to be substituted</i>
Private means of access adjacent to the south of Downhill Lane (East)	At point 1/H as shown on the Streets, Rights of Way and Access Plans	Work No. 11
Private means of access adjacent to the north of Downhill Lane (East)	At point 1/J as shown on the Streets, Rights of Way and Access Plans	Work No. 12

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(1) <i>Private means of access to be stopped up</i>	(2) <i>Extent of stopping up</i>	(3) <i>New private means of access to be substituted</i>
Private means of access adjacent to the east of the A1290	At point 1/R as shown on the Streets, Rights of Way and Access Plans	Work No. 1
Private means of access adjacent to the east of the A1290	At point 1/S as shown on the Streets, Rights of Way and Access Plans	Work No. 1

PART 3

STREETS TO BE STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) <i>Street to be stopped up</i>	(2) <i>Extent of stopping up</i>
A19(T) Northbound Layby	Between points 1/A and 1/B on the Streets, Rights of Way and Access Plans

SCHEDULE 5

Article 23(2) and (3)

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 2020;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to the A19 Downhill Lane Junction Development Consent Order 2020) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽⁵⁾ has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right over land is purchased from”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 20 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modification referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(5) 1973 c. 26.

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(5) Section 11(6) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 20), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(7) (powers of entry: further notices of entry), 11B(8) (counter-notice requiring possession to be taken on specified date), 12(9) (unauthorised entry) and 13(10) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(11) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory and has not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 26 (application of the 1981 Act) of the A19 Downhill Lane Junction Development Consent Order 2020 in respect of the land to which the notice to treat relates.

(2) But see article 27(3) (acquisition of subsoil or airspace only) of the A19 Downhill Lane Junction Development Consent Order 2020 which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

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- (6) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I.2009/1307.
- (7) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
- (8) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
- (9) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
- (10) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
- (11) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I.2009/1307.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

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(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 6

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
1/2c, 1/2d	Required to provide construction access.	Work No. 17
1/2e	Required to provide construction access.	Work Nos. 17, 19 and 20
1/3a, 1/4a, 1/5b, 1/7b, 1/11, 1/12a	Required to provide an area for construction material storage and storage of plant.	All Works
1/3a	Required to provide construction access.	Work Nos. 1, 2, 3, 8, 17, 18 and 19
1/4a	Required to provide construction access.	Work Nos. 20 and 21
1/5b	Required to provide construction access.	Work Nos. 1, 3, 7, 8, 19 and 20
1/7b	Required to provide construction access.	Work Nos. 8, 9 and 11
1/7d, 1/10h, 1/10i, 1/12b, 1/15a	Required to provide site access.	All Works
1/10f	Required to provide construction access and site access.	Work Nos. 12, 13 and 25
1/14a, 1/14b, 1/15b	The main site compound to include, but not limited to, site offices, welfare facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.	Work No. 25A and 25B
1/2f, 1/6	Required to provide a perimeter enclosure and exclusion zone to allow for safe construction.	Work No. 8
2/1, 2/2a	Required to provide access to the site compound.	Work No. 25C
2/2b	The main site compound to include, but not limited to, site offices, welfare	Work No. 25C

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<i>(1)</i> <i>Plot reference Number shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
	facilities, parking provisions, storage of plant and materials, and the treatment of site generated waste.	

SCHEDULE 7

Articles 32 and 40

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY,
GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(12)), belonging to or maintained by that undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(13) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(14); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(15) (adoption of sewers and disposal works) of that Act or an

(12) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(13) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000.

(14) 1991 c. 56.

(15) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and section 56 of, and paragraphs 2 and 90 of Schedule 7 to, the Water Act 2014 (c. 21). Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014.

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agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up and restriction of use of streets and private means of access), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker

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and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽¹⁶⁾;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽¹⁷⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 32 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) to the electronic communications code.

⁽¹⁶⁾ 2003 c. 21.

⁽¹⁷⁾ Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

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17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 8

Article 36

AMENDMENTS TO THE A19/A184 TESTO’S JUNCTION
ALTERATION DEVELOPMENT CONSENT ORDER 2018

<i>(1)</i> <i>Where the amendment is to be made</i>	<i>(2)</i> <i>How the amendment is to be made</i>	<i>(3)</i> <i>Text to be substituted, inserted or omitted</i>
Article 40 (certification of documents, etc.)	After sub-paragraph (3) insert	“(4) The Testo’s plans as defined in the A19 Downhill Lane Junction Development Consent Order 2020 (the “latter Order”) are to be taken as plans or documents certified in accordance with paragraph (2) above once certified in accordance with article 41 (certification of documents, etc.) of the latter Order.”
In Schedule 1 (authorised development)		

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(1) <i>Where the amendment is to be made</i>	(2) <i>How the amendment is to be made</i>	(3) <i>Text to be substituted, inserted or omitted</i>
Work No.4	Omit	
In Schedule 3 (classification of roads, etc.), Part 3 (other public rights of way)		
Cycle track	Omit row 1	
In Schedule 4 (permanent stopping up of streets and private means of access), Part 1 (public rights of way to be stopped up and for which a substitute is to be provided)		
The stopping up of public right of way B46	In column (2) (extent of stopping up) substitute "1/8" with	"1/9"
In Schedule 10 (documents to be certified)		
Works Plans – Regulation 5(4)	In column (3) (revision) substitute "2" with	"3"
Streets, Rights of Way and Access Plans – Regulation 5(4)	In column (3) (revision) substitute "1" with	"2"
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	In column (3) (revision) substitute "1" with	"2"

SCHEDULE 9

Article 41

DOCUMENTS TO BE CERTIFIED

(1) <i>Document</i>	(2) <i>Document Reference</i>	(3) <i>Revision</i>
Book of Reference – Regulation 5(2)(d)	TR010024/APP/4.3	5
Environmental Statement – Volume 1 – Regulation 5(2)(a)	TR010024/APP/6.1	0
Environmental Statement – Volume 2: The Figures – Regulation 5(2)(a)	TR010024/APP/6.2	0
Environmental Statement – Volume 3: The Appendices – Regulation 5(2)(a)	TR010024/APP/6.3	0
Statement relating to Statutory Nuisances – Regulation 5(2)(f)	TR010024/APP/6.5	0
Flood Risk Assessment – Regulation 5(2)(e)	TR010024/APP/6.6	0
Assessment of Nature Conservation Effects – Regulation 5(2)(l)	TR010024/APP/6.7	0
Assessment of Historic Environmental Effects – Regulation 5(2)(m)	TR010024/APP/6.8	0

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<i>(1)</i> <i>Document</i>	<i>(2)</i> <i>Document Reference</i>	<i>(3)</i> <i>Revision</i>
Habitats Regulations Assessment – Regulation 5(2)(g)	TR010024/APP/6.10	0
Outline CEMP – Regulation 5(2)(q)	TR010024/APP/7.2	0
Application Documents Errata – Regulation 5(2)(q)	TR010024/APP/7.6	1
Location Plan – Regulation 5(2)(o)	TR010024/APP/2.1	0
Scheme Layout Plan – Regulation 5(2)(o)	TR010024/APP/2.2	0
Land Plans – Regulation 5(4)	TR010024/APP/2.3	1
Works Plans – Regulation 5(4)	TR010024/APP/2.4	0
Streets, Rights of Way and Access Plans – Regulation 5(4)	TR010024/APP/2.5	1
Engineering Drawings and Sections – Regulations 5(2)(o), 5(4) and 6(2)	TR010024/APP/2.6	2