

Draft Development Consent Order

Eversheds Sutherland (International) LLP

The West Midlands Rail Freight Interchange Order 201X

Stage 2 Consultation Draft (July 2017)

201[X] No. [XXXX]

The West Midlands Rail Freight Interchange Order 201X

Made - - - - - ***

Coming into force - - - - - ***

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Form and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c) by a [Panel of [] members (the Panel)/single person] appointed by the Secretary of State in accordance with Chapter [2/3] of Part 6 of the 2008 Act.

The [Panel/single appointed person], having considered the representations made and not withdrawn and the application with the accompanying documents, in accordance with section 83 of the 2008 Act has reported to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn and the report of the [Panel/single appointed person] has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application].

The Secretary of State in exercise of the powers conferred by section 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 21, 23, 24, 33, 34, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the West Midlands Rail Freight Interchange Order 201[X] and comes into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“the 1980 Act” means the Highways Act 1980(f);

“the 1984 Act” means the Road Traffic Regulation Act 1984(g);

“the 1990 Act” means the Town and Country Planning Act 1990(h);

“the 1991 Act” means the New Roads and Street Works Act 1991(i);

“the 2008 Act” means the Planning Act 2008(j);

(a) 2008 c. 29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732 and S.I. 2013/522.

(c) S.I. 2010/103, amended by S.I. 2012/635.

(d) 1961 c.33.

(e) 1965 c.56.

(f) 1980 c.66.

(g) 1984 c.27.

(h) 1990 c.8.

(i) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(j) 2008 c.29.

“the 2009 EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a);

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010(b);

“A5/A449 link road” means the new road to be constructed as part of the authorised development between the A5 trunk road and the A449 (Stafford Road) as shown on [];

“access and rights of way plans” means the plans of that description referred to in article [] and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” for the purposes of article [] (*highway works*) and article [] (*apparatus and rights of statutory undertakers in stopped up streets*) has the same meaning as in Part 3 of the 1991 Act;

“authorised activity” means for the purpose of article [] (*power to override easements and other rights*)—

- (a) the erection, construction, carrying out or maintenance of any building or works on land;
- (b) the erection, construction or maintenance or anything in, on, over or under land; or
- (c) the use of any land;

“authorised building” means any building erected as part of the authorised development;

“authorised development” means the development described in Schedule 1 (*authorised development*) and any other development authorised by this Order, which is development within the meaning of section 32 (*meaning of development*) of the 2008 Act and any works carried out under the requirements;

“the book of reference” means the document of that description referred to in article [] and certified by the Secretary of State as the book of reference for the purposes of this Order;

“[bridge plans] mean the plans of that description referred to in article [] and certified as the [bridge plans] by the Secretary of State for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“bus” has the same meaning as in regulation 22 of the Traffic Signs Regulations and General Directions 2002(c);

“carriageway” has the same meaning as in the 1980 Act;

“cycle track” has the same meaning as in section 329(1) (*further provisions as to interpretation*) of the 1980 Act(d)

“the design and access statement” means the document of that description referred to in article [] and certified by the Secretary of State as the design and access statement for the purposes of this Order;

“development consent obligation” means the development consent obligation entered into by agreement under section 106 (planning obligations) of the 1990 Act(e) dated [] in respect of the authorised development and any subsequent amendment to the obligation;

“the environmental statement” means the document of that description referred to in article [] submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed

(a) S.I. 2009/2263, as amended by S.I. 2011/98, 2011/1043, S.I. 2012/635 and S.I. 2012/787.

(b) S.I. 2010/948 [update].

(c) S.I. 2002/3113.

(d) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(e) Section 106 was substituted by section 12(1) of the Planning and Compensation Act 1991 (c. 34) and was subsequently amended by section 33 of the Greater London Authority Act 2007 (c. 24) section 174 of the Planning Act 2008 (c. 29) and paragraphs 1 and 3 of Schedule 2 to the Growth and Infrastructure Act 2013 (c. 27).

Forms and Procedure) Regulations 2009(a) and certified by the Secretary of State as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework travel plan” means the document of that designation referred to in requirement 3 of Schedule 2;

“hedgerow” has the same meaning as in the Hedgerow Regulations 1997(b);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“highway clarification plans” means the plans of the description referred to in article [44] and outlined as highway clarification plans by the Secretary of State for the purposes of this Order;

“Highways England” means Highways England Company Limited (company number 9346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(c);

“highway general arrangement plans” means the plans of that description referred to in article [44] and certified as the highway general arrangement plans by the Secretary of State for the purposes of this Order;

“highway works” means the works comprised in Works Nos. 5 and 6;

“illustrative general arrangement of railway alignment plans” means the plans of that description referred to in article [44] and certified as the illustrative general arrangement of railway alignment plans by the Secretary of State for the purposes of this Order;

“the land plans” means the plans of that description referred to in article [44] and certified as the land plans by the Secretary of State for the purposes of this Order;

“lead local flood authority” means [Staffordshire County Council];

“local highway authority” means [Staffordshire County Council];

“local planning authority” means South Staffordshire District Council;

“maintain” includes inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve and any derivative of “maintain” is to be construed accordingly;

“new speed limit plans” means the means of that description referred to in article [] and certified by the Secretary of State as the new speed limit plans for the purposes of this Order;

“occupation” means occupation of the authorised buildings other than for the purpose of constructing, fitting out, commissioning or site security;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference [see article 2(2)];

“the Order limits” means the limits shown on the Order limits plans represented by a red line within which the authorised development may be carried out;

“the Order limits plan” means the plan of that description referred to in article [44] and certified as the Order limits plan by the Secretary of State for the purposes of this Order;

“outline demolition and construction environmental management plan” means the document of that description referred to in article [44] and certified by the Secretary of State as the outline demolition and construction environmental management plan for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (*interpretation*) of the Acquisition of Land Act 1981(d);

(a) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

(b) S.I. 1997/1160.

(c) S.I. 2015/376.

(d) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 c. 34. There are other amendments to the 1981 Act which are not relevant to this Order.

“the parameters plans” means the plans of that description referred to in article [44] and certified as the parameters plans by the Secretary of State for the purposes of this Order;

“phase” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to an approved by the local planning authority under requirement 2 (*phase of development*);

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board or a lead local flood authority or a sewerage undertaker;

“railway” has the same meaning as in the 2008 Act;

“rail terminal illustrative phase 2 layout plans” means the plans of that description referred to in article [44] and certified as the rail terminal illustrative phase 2 layout plans by the Secretary of State for the purposes of this Order;

“relevant body” means in respect of each of the highway works the body referred to in respect of each of those works in column (4) of the table in requirement 5 (*design and planning of highway works*);

“relevant highway authority” means in any provision of this Order the highway authority for any area of land to which that provision relates;

“relevant street authority” means in any provision of this Order the street authority for any area of land to which that provision relates;

“relevant traffic authority” has the meaning as in section 121A (traffic authorities) of the 1984 Act;

“relocation works” means works executed, or apparatus provided, under paragraph (2) of article 32 (*apparatus and rights of statutory undertakers in stopped up streets*);

“requirements” means the requirements set out in Schedule 2 (*requirements*);

[“schedule of archaeological works” means the document of that description referred to in article [] and certified by the Secretary of State as the schedule or archaeological works for the purposes of this Order;]

“statutory undertaker” means statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statutory utility” means a statutory undertaker for the purposes of the 1990 Act or a public communications provider as defined in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic officer” means a person designated under section 2 (designation of Traffic Officers) of the Traffic Management Act 2004(b);

[“traffic regulation plans” means the plans of that description referred to in article [] and certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;]

“travel plan steering group” means the group of that name constituted under the provisions of the framework travel plan;

“the undertaker” means—

- (a) Four Ashes Limited (company number 09747871) registered office 4th Floor, 7/10 Chandos Street, Cavendish Square, London W1G 9DQ; and
- (b) any other person who has the benefit of this Order in accordance with section 156 (benefit of order granting development consent) of the 2008 Act for such time as that section applies to that person;

(a) 2003 c. 21.
(b) 2004 c. 18.

“verge” means any part of the road which is not a carriageway;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or public drain;

“water authority” means [Severn Trent Water Limited (company number 02366686) registered at Severn Trent Centre, 2 St John’s Street, Coventry, CV1 2LZ] and any successor in function; and

“the works plans” means the plans of that description referred to in article [] and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and where applicable distances between points on a work comprised in the authorised development are to be measured along that work.

(4) References in this Order to numbered works are references to the works as numbered in Schedule 1 (*authorised development*) and references to numbered requirements are to the requirements as numbered in Schedule 2 (*requirements*).

(5) For the purposes of this Order all areas described in square metres in the book of reference are approximate.

(6) Where the term approximate precedes a figure of measurement or quantum then the flexibility accorded by that word is limited by the parameters and the limits of deviation as described in article 4 and does not authorise any works which would result in significant environmental effects which have not been assessed in the environmental statement.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3.—(1) Subject to the provisions of the Order, the undertaker is granted development consent for the authorised development to be carried out operated and maintained within the Order limits.

(2) Nothing in this Order prevents the carrying out of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or erection of any temporary means of enclosure and the temporary display of site notices or advertisement immediately upon this Order coming into force.

Parameters of authorised development

4. The authorised development is to be carried out within the parameters shown and described on the parameters plans and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;
- (b) [in respect of the highway works deviate vertically from the levels shown on the [highway plans] to a maximum of [1.5] metres upwards or downwards; and]
- (c) [in respect of the railway works comprised in Works Nos. [] deviate vertically from the levels shown on the [rail plans] to a maximum of [1.5] metres upwards or [2.5] metres downwards;] and
- (d) in respect of any boundary between the areas of two numbered works deviate laterally by a maximum of 20 metres either side of the boundary shown on the works plans,

except that these maximum limits described in (a) to (d) do not apply to constrain the authorised development when it is demonstrated by the undertaker to the local planning authority's satisfaction and the local planning authority certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially worse environmental effects from those assessed in the environmental statement.

Authorisation of use

5. Subject to the provisions of this Order, the undertaker and any persons authorised by the undertaker may operate and use that part of the authorised development for the purposes of a rail freight terminal and warehousing, any purposes for which the authorised development is designed and for any purposes ancillary to those purposes.

Maintenance of authorised development

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) Paragraph (1) does not extend to any maintenance works which would give rise to any materially new or materially worse environmental effects from those assessed in the environmental statement.

Benefit of Order

7.—(1) Subject to paragraphs (2), (3) and (4) the undertaker shall have the benefit of the Order.

(2) Four Ashes Limited, have the sole benefit of the provisions of [Part 5] (*powers of acquisition*) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(3) Four Ashes Limited have the sole benefit of the powers conferred by this Order to carry out the highway works in accordance with the provisions of Parts 2 and 3 of Schedule [15] (*protective provisions*) unless the Secretary of State consents to the transfer of the benefit of those provisions.

(4) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

PART 3 STREETS

Street works

8.—(1) The undertaker may for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (*streets subject to street works*) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) construct bridges and tunnels;
- (f) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (g) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (h) reduce the width of the carriageway of the street;
- (i) make and maintain crossovers and passing places; and

- (j) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (i).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

Power to alter layout, etc., of streets

9.—(1) Subject to paragraph (2), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within Works No.5 [which are private roads] and the layout of any street at its junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain crossovers, and passing places.

(2) The powers conferred by paragraph (1) must not be exercised without the consent of the local highway authority but such consent must not be unreasonably withheld and if the highway authority which has received an application for consent to exercise powers under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application is made, it is deemed to have granted consent.

Permanent Stopping up of streets

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up permanently the street specified in column (2) of Schedule 4 (*street to be permanently stopped up*) to the extent specified, by reference to the letters shown on the access and rights of way plan, in column (3) of that Schedule.

(2) No street specified in column (2) of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the relevant street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article [] (*apparatus and rights of statutory undertakers in stopped up streets*).

Temporary stopping up of streets

11.—(1) The undertaker may during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the relevant street authority which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) If a street authority which has received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Public rights of way – creation[, diversion] and stopping up

12.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development stop up the public right of way specified in column (2) of Part 1 of Schedule 5 (*public rights of way to be permanently stopped up for which no substitute is to be provided*) to the extent specified, in column (3) of that Part of that Schedule;

(2) The undertaker must in connection with carrying out of the authorised development provide the new public rights of way specified in columns (1) and (2) of Part 3 of Schedule 5 to the extent specified in column (3) of that Part of that Schedule.

Accesses

13.—(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or street authority as appropriate (such consent not to be unreasonably withheld), form and lay out such means of access (permanent or temporary) or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The agreement of the relevant highway authority or street authority as appropriate is not required for the formulation, layout or improvement of a new or existing means of access described in Schedule 1 (*authorised development*) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 15 (*protective provisions*).

(3) If a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(4) The private means of access as set out in column (2) of Part 1 of Schedule 6 (*private means of access to be replaced*) may be removed by the undertaker and if removed must be replaced by the means of access as set out in column (3) of Part 1 of Schedule 6.

(5) The private means of access as set out in column (2) of Part 2 of Schedule 6 (*private means of access to be closed for which no substitute is to be provided*) may be closed by the undertaker without a substitute being provided.

(6) The undertaker must provide the private means of access as set out in column (2) of Part 3 of Schedule 6 (*new private means of access created*).

Maintenance of highway works

14.—(1) Any highway works to be carried out under this Order shall be completed in accordance with the provisions of paragraphs 2 and 3 of Schedule 15 (*protective provisions*) and with effect from the date of the provisional certificate referred to in paragraph 8 of Parts 2 and 3 of Schedule 15 will be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the relevant highway authority.

(2) Where new land not previously part of the public highway is to form part of the public highway further to the provisions of this Order it shall be deemed as dedicated as part of the highway on the issue of the final certificate for the works relating to that land under paragraph 9 of Parts 2 and 3 of Schedule 15.

Classification of A5/A449 link road

- 15.**—(1) The A5/A449 link road described in Part 1 of Schedule 7 (*new roads*) is to be—
- (a) classified as set out in column (3) of Part 1 of Schedule 7 for the purpose of any enactment or instrument which refers to highways classified as such; and
 - (b) provided for the use of the classes of traffic defined in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act as set out in column (4) of Part 1 of Schedule 7,

as if such classification has been made under sections 10(2) and 12(3) of the 1980 Act.

(2) From the date of issue of the final certificate in respect of the A5/A449 link road, pursuant to paragraph 7 of Part 4 of Schedule [15], Staffordshire County Council shall be the highway authority for that road.

Speed limits

16.—(1) Upon the opening of the length of highway specified in columns (1) and (2) of Part 2 of Schedule 8 (*roads subject to 30mph speed limit*) no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in column (2) of Part 2 of Schedule 8.

(2) Upon the opening of the length of highway specified in columns (1) and (2) of Part 3 of Schedule 8 (*roads subject to 50mph speed limit*) no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in column (2) of Part 3 of Schedule 8.

(3) Upon the opening of the length of highway specified in columns (1) and (2) of part 4 of Schedule 8 (*roads subject to 60mph speed limit*) no person is to drive any motor vehicle at a speed exceeding 60 miles per hour in the lengths of road identified in column (2) of Part 4 of Schedule 8.

(4) The orders referred to in columns (1) and (2) of Part 1 of Schedule 8 (*existing orders*) are revoked or varied as set out in column (3) of Part 1 of Schedule 8 upon the event listed in column (4) occurring.

(5) The speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) (a) have the same effect; and
- (b) (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(6) No speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those Regulations.

[Amendments to traffic regulation orders]

17. The orders referred to in columns (1) and (2) of Schedule 9 (*amendments to existing orders*) are revoked or amended as set out in column (3) of Schedule 9 upon the event listed in column (4) of Schedule 9 occurring.

[Clearways and no waiting]

18.—(1) Subject to paragraphs (4) and (5), following the event specified in column (4) of Part 1 of Schedule 10 (*clearways*), no person, except upon the direction or with the permission of a police

(a) S.I. 2011/935.

officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 10, other than a lay-by.

(2) Subject to paragraphs (4) and (6) following the event specified in column (4) of Part 1 of Schedule 10 no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait on any verge adjacent to any part of a carriageway specified in columns (1) and (2) of Part 1 of Schedule 10 where such prohibition is indicated as applying in column (3) of Part 1 of Schedule 10.

(3) Subject to paragraph (4) following the event specified in column (3) of Part 2 of Schedule 10 (no waiting at any time) no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to wait at any time on any day, on the sides of the carriageway specified in columns (1) and (2) of Part 2 of Schedule 10 or its adjacent verge at any time.

(4) Nothing in paragraphs (1), (2) or (3) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of the carriageway or verge, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the carriageway or verge;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the carriageway or verge of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 to the Telecommunications Act 1984(a); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, Highways England, a safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(b); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(c); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(5) Nothing in paragraph (1) applies to any vehicle selling or dispensing goods to the extent that the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispersed.

(6) Nothing in paragraph (2) applies—

(a) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary—

(i) to enable a person to board or alight from the vehicle;

(ii) to enable goods to be loaded on to or unloaded from the vehicle; or

(iii) to enable goods to be sold from the vehicle provided such goods are immediately delivered at, or taken into, premises adjacent to the vehicle from which sale is effected;

(a) 1984 c. 12.

(b) 1991 c. 56.

(c) 2000 c. 26.

- (b) so as to prevent a vehicle waiting on any verge specified in paragraph (2) for so long as may be necessary to enable that vehicle, if it cannot conveniently be used for such purpose without waiting on such verge, to be used in connection with any building operation or demolition, the removal of any obstruction or potential obstruction to traffic, the maintenance, improvement or reconstruction of such verge or of a carriageway immediately adjacent to such verge or the erection, laying, placing, maintenance, testing, alteration, repair or removal of any structure, works or apparatus in, on, under or over that verge or carriageway; or
- (c) to a vehicle waiting on any verge specified in paragraph (2) while any gate or other barrier at the entrance to premises to which the vehicle requires access or from which it has emerged is opened or closed.

(7) Paragraphs (1) to (6) have effect as if made by a traffic regulation order under the 1984 Act and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

[Motor vehicle restrictions]

19.—(1) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed along any part of a road specified in Part 1 of Schedule 11 (*motor vehicle access only restrictions*) except for the purpose of access.

(2) No person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit any vehicle to proceed along the parts of road specified in columns (1) and (2) of Part 2 of Schedule 11 (*one way streets*) in a direction other than that specified in relation to that road in column (3) of Part 2 of Schedule 11 (*one way streets*).

(3) Subject to paragraph (4) no person is to cause or permit any vehicle to enter the lay-by situated in the location described in column (1) of Part 3 of Schedule 11 (*prohibition of entry to abnormal loads lay-by*) at the point of entry described in column (2) of Part 3 of Schedule 11.

(4) Nothing in paragraph (3) above applies—

- (a) to an abnormal load vehicle;
- (b) in relation to a vehicle being used;
 - (i) to escort an abnormal load;
 - (ii) for the maintenance, improvement or reconstruction of the layby;
 - (iii) for the laying, erection, alteration or repair in or near the layby of any sewer or of any main pipe or apparatus for the supply of gas, water or electricity or of any telecommunications apparatus as defined in Schedule 2 of the Telecommunications Act 1984 on or near the layby referred to in column (2) of Part 3 of Schedule 11;
 - (iv) for police, ambulance or fire brigade purposes; or
 - (v) in the service of a local authority or of a water authority in pursuance of statutory powers or duties.

(5) Subject to paragraph (6) no person, except upon the direction or with the permission of a police officer or traffic officer in uniform, is to cause or permit the length of road identified in Part 4 of Schedule 11 (*buses and cyclists only*) to be used by any vehicles other than a bus or cycle except for the purpose of access.

(6) Nothing in paragraph (5) applies to a vehicle being used—

- (a) to allow people to board or alight;
- (b) in connection with—
 - (i) building, industrial or demolition operations;
 - (ii) the removal of any obstruction to traffic;
 - (iii) the maintenance, improvement or reconstruction of the road including the verge; or

- (iv) the laying, erection, alteration or repair on, or in land adjacent to the road or verge of any sewer or of any main, pipe or apparatus for the supply of gas, water or electricity or of any telegraphic line as defined in the Telecommunications Act 1984;
- (c) in the service of a local authority, Highways England, or a statutory undertaker in pursuance of statutory powers or duties;
- (d) for the purpose of delivering or collecting postal packets as defined in the Postal Services Act 2000 by any universal service provider; or
- (e) for fire brigade, ambulance or police purposes.

(7) Paragraphs (1) to (6) have effect as if made by a traffic regulation order under the 1984 Act, and their application may be varied or revoked by such an order or by any other enactment which provides for the variation or revocation of such orders.

Agreements with highway authorities

20.—(1) A relevant highway authority and the undertaker may enter into agreements with respect to—

- (a) the construction, and/or maintenance of any new highway, including any structure carrying the highway over the existing canal and railway and any railway authorised by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any highway under the powers conferred by this Order;
- (c) the maintenance of landscaping within a highway constructed as part of the highway works;
- (d) any stopping up, alteration or diversion of a highway as part of or to facilitate the authorised development; or
- (e) the carrying out in the highway of any of the works referred to in article [9] (*street works*).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the relevant highway authority to carry out any function under this Order which relates to the highway in question;
- (b) include an agreement between the undertaker and relevant highway authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

21.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to

(a) 1991 c.56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43) and, sections 36(2) and 99 of the Water Act 2003 (c. 37) (subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act.

such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(a).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions excluding watercourse, which are used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(8) If a person who has received an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of its decision within 28 days of receiving the application, that person is deemed to have granted consent or given approval as the case may be.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner, who is not the undertaker, and occupier of the land.

(3) Any person entering land under the powers conferred by this article on behalf of the undertaker—

- (a) must, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the relevant highway authority; or
- (b) in a private street without the consent of the relevant street authority;

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be

(a) S.I. 2010/675.

(b) 1991 c. 57.

determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) If either a highway authority or a street authority which has received an application for consent under paragraph (4) fails to notify the undertaker of its decision within 28 days of receiving the application the authority is deemed to have granted the consent.

PART 5 POWERS OF ACQUISITION

Guarantees in respect of payment of compensation

23.—(1) The undertaker must not exercise a power conferred by this Part unless a guarantee or alternative forms of security in respect of the liabilities of the undertakers to pay compensation under the power being exercised is first in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by this Part for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

Compulsory acquisition of land

24.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental to, it as described in the book of reference and shown on the land plans.

(2) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject shall be discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) This article is subject to—

- (a) article 29 (*time limit for exercise of authority to acquire land and rights compulsorily*); and
- (b) article 33(9) (*temporary use of land for carrying out the authorised development*).

Compulsory acquisition of rights

25.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights [or impose such restrictive covenants] described in the book of reference and shown on the land plans.

(2) From the date on which a compulsory acquisition notice is served pursuant to section 134 of the 2008 Act or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is, or rights are, acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section [] (other provisions as to divided land) of the 1965 Act, as substituted by paragraph (5) of Schedule [] (*modifications of compensation and compulsory purchase enactments for creation of new rights*), where the undertaker acquires an existing right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 14 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article.

Private rights

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights [or the imposition of restrictive covenants] under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right [or restrictive covenant]—

- (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act (a) to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (b) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (*statutory undertakers*) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights [or the imposition of restrictive covenants] over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; or

(a) Section 152 was amended by S.I. 2009/1307.

(b) Section 138 was amended by section 23(4) of the Growth and Industry Act 2013.

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any agreement referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

Power to override easements and other rights

27.—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the use of the land arising by virtue of a contract.

(2) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(3) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(8) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

(a) is liable to pay compensation; and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(9) In this article—

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

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit 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 of the Communications Act 2003; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide; and

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

Compulsory acquisition of land – incorporation of the mineral code

28. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(b) are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”;
- (c) paragraph 8(3) is not incorporated.

Time limit for exercise of authority to acquire land and rights compulsorily

29.—(1) After the end of the period of [5] years beginning on the day on which the Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(c) as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 33 (*temporary use of land for carrying out the authorised development*) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period, subject always to the limitation in article 33.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

30.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order was a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5 (earliest date for execution of declaration) omit subsection (2).

(5) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 (application of compulsory acquisition provision) of the 2008 Act to the compulsory acquisition of land and rights under this Order.

(a) 2003 c. 21. See section 106.

(b) 1981 c. 67.

(c) 1981 c. 66 [sections [] were amended by the Housing and Planning Act 2016].

Statutory undertakers

31. The undertaker may, subject to Schedule 15 (*protective provisions*)—

- (a) extinguish the rights of statutory undertakers shown on the land plans and described in the book of reference; and
- (b) replace, reposition, renew, alter and supplement the apparatus belonging to statutory undertakers as shown on the [statutory undertakers' apparatus plan].

Rights under or over streets

32.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who—

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

[Temporary use of land for carrying out the authorised development]

33.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter into and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule [] (*land of which temporary possession may be taken*) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule [].

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) For the avoidance of doubt unless provided for in the book of reference and article 25 (*compulsory acquisition of land and rights*) the undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining authorised development

34.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

(11) In this article, “maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first brought into use.

Apparatus and rights of statutory undertakers in stopped up streets

35.—(1) Where a street is stopped up under article 11 (*stopping up of streets*) any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

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

and the placing of that new apparatus involves additional costs which would not have been incurred if the apparatus had been of the same type, capacity or laid at the same depth as the existing apparatus, then the amount payable to the statutory utility is to be reduced by a sum equivalent to those additional costs.

(5) For the purposes of paragraph (4)—

- (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 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.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)), 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 statutory utility 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.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works must be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

PART 6

MISCELLANEOUS AND GENERAL

Operation and use of railways

36.—(1) The undertaker may operate and use the railway comprised in the authorised development and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(a).

Operational land for the purposes of the 1990 Act

37. Development consent granted by this Order within that part of the Order limits upon which the highway works are to be carried out is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Charges

38. The undertaker may demand, take or recover or waive such charges for carrying goods on the railway comprised in the authorised development, and for any other services or facilities provided in connection with the operation of that railway, as it thinks fit.

[Defence to proceedings in respect of statutory nuisance]

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance

(a) 1993 c. 43. this Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c. 20) and the Railways Act 2005 (c. 14). There are other amendments to this Act which are not relevant to this Order.

(b) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.

is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(a); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Felling or lopping of trees and removal of hedgerows

40.—(1) Subject to sub-paragraph (4) the undertaker may fell or lop any tree, shrub or hedgerow near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The provisions of this article do not apply without the agreement of the local planning authority to any tree or hedgerow identified to be retained in the landscaping scheme approved under requirement [8 (*provision of landscaping and ecological mitigation*)].

(5) The provisions of this article do not apply without the agreement of the relevant highway authority to any tree or hedgerow within a highway. [Consider article 37 A14].

Protective provisions

41. Schedule 15 to this Order has effect.

Governance of requirements and protective provisions relating to highway works

42.—(1) When in any requirement or in Parts 2 and 3 of Schedule 15 (*protective provisions*) approval or agreement is required of, or with, anybody in relation to the content, carrying out or use of the authorised works (including for the avoidance of doubt the approval of details or plans under the requirements) such approval or agreement must not be given if it would permit development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement (Document []) or any updated environmental information supplied under the 2009 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority under a requirement or the relevant highway authority under a requirement or Parts 2 and 3 of Schedule 15 then they may subsequently be amended by agreement with the local planning authority or relevant highway authority as the case may be provided that no amendments to those details, plans or other matters may be approved where such amendments would permit development which would give rise to any materially new or materially worse environmental effects in

(a) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55). Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

comparison with those assessed in the environmental statement (Document []) or any updated environmental information supplied under the 2009 EIA Regulations.

(3) Unless otherwise stated in a requirement the requirement is enforceable by the local planning authority.

Disapplication, application and modification of legislative provisions

43.—(1) Where an application is made to any party for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act(a); and
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application, and any references to “local planning authority” for the purposes of this provision is replaced by “the local planning authority or other authority from whom a consent, agreement or approval is required”.

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development—

- (a) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010(b) in relation to the carrying on of a relevant flood risk activity for the purpose of the works;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991;
- (c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c) in relation to watercourses for which [Staffordshire County Council] is the drainage board concerned;
- (d) section 32 (variation of awards) of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and
- (f) section 28E (duties in relation to sites of scientific interest) of the Wildlife and Countryside Act 1981(d).

(4) In paragraph (3)(a) “relevant flood risk activity” means an activity within paragraph 3(1)(a), (b) or (c) of Schedule 23ZA (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2010.

(a) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34); section 43(2) of the Planning and Compulsory Act 2004 (c. 5); paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11, to the Planning Act 2008 (c. 29); section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011 (c. 20); and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27). Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34); and paragraphs 1 and 4 of Schedule 10 to the Planning Act 2008 (c.29).

(b) S.I. 2010/675 as amended by the Environmental Permitting (England and Wales) (Amendment) No.2) Regulations 2016.

(c) 1991 c. 59.

(d) 1981 c. 69.

(5) The [] Act [] [Check]] has effect subject to the provisions of this order and sections 18 (byelaws), 27 (flood prevention) and 28 (excavation of minerals) of that Act, and any byelaws made and having effect under section 18, do not apply in relation to anything done or omitted to be done in connection with construction of the authorised development.

(6) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission issued pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order shall be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 and 161 of the 2008 Act.

(7) Where a development consent obligation related to this Order is to be modified or discharged then the appropriate authority pursuant to section 106A(11) of the 1990 Act will be the local planning authority or local highway authority by whom it is enforceable and the reference to the “Secretary of State” in section 106(11)(aa) shall for the purpose of this provision be replaced by the “local planning authority and/or the local highway authority by which it is enforceable”.

(8) The requirements shall be deemed to be imposed as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act (conditional grant of planning permission) and the development consent granted by the Order was a planning permission granted under the 1990 Act and the provisions of section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act and section 78 of the 1990 Act (right of appeal in relation to planning decisions) shall apply accordingly.

(9) Non-material changes to the development consent granted by this Order may be authorised by the local planning authority and for such purposes section 96A of the 1990 Act (non-material changes to planning permission) shall apply to this Order as if it was a planning permission granted under the 1990 Act and the requirements were conditions attached to such a planning permission and development in accordance with such changes so authorised shall be deemed to be in accordance with this Order.

(10) The Order shall not constitute a planning permission for the purpose of Part 11 of the 2008 Act (community infrastructure levy) notwithstanding the definition of planning permission contained within article 5 of the 2010 Regulations (meaning of planning permission).

(11) Schedule [16] (*miscellaneous controls*) to this Order which makes provision applying/modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order has effect.

(12) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Certification of plans and documents [to be completed when drafting settled to include all documents referred to]

44.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans (Document []);
- (b) the book of reference (Document []);
- (c) the [bridge plans] (Document []);
- (d) the outline demolition and construction environmental management plan (Document []);
- (e) the design and access statement ([]);
- (f) the environmental statement (Document []);
- (g) [the highway classifications plans (Document []);]
- (h) the highway general arrangement plans (Document []);
- (i) the land plans (Document []);
- (j) the new speed limit plans (Document []);
- (k) the order limits plans (Document []);

- (l) the parameters plans (Document []);
- (m) the rail terminal illustrative phase 2 layout plans (Document []);
- (n) [the traffic regulation plans (Document []); and
- (o) the works plans (Document []),

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article—
- “electronic transmission” means a communication transmitted—
 - (a) by means of electronic communications network; or
 - (b) by other means but while in electronic form; and
 - “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

46. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the Lands Chamber of the Upper Tribunal.

Signed by the authority of the Secretary of State for Transport

Date

[Name]
[Position]
[Department]

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

PART 1

NSIP: THE CONSTRUCTION OF A RAIL FREIGHT INTERCHANGE

In the County of Staffordshire and the District of South Staffordshire—

Works No. 1

Within the area of land described on the works plans as Works No. 1—

The construction of a new railway line from the rail freight terminal (Works No. 2) to connect with the existing West Coast Main Loop railway line the general arrangement of which is shown on the illustrative general arrangement of railway alignment plans and including—

- (a) construction of a new railway track and associated rail infrastructure;
- (b) formation of new railway embankments and all necessary earthworks and drainage;
- (c) new arrival and departure rail tracks adjacent to the existing railway;
- (d) the alteration of the existing railway infrastructure including points and signals;
- (e) the removal and relocation of telecommunications mast;
- (f) the removal of Footpath 29 footbridge over the West Coast Main Line Loop railway;
- (g) the removal of masonry bridge over the West Coast Main Line Loop railway;
- (h) the removal and replacement of pipework and boreholes as shown on [];
- (i) the stopping up of Gravelly Way to the east and west of the existing railway bridge; and
- (j) the stopping up of the length of Footpath 29 shown on the access and rights of way plans.

Works No. 2

Within the area of land described on the works plans as Works No. 2—

The construction of a rail freight terminal, the general arrangement of which is shown on the rail terminal illustrative phase 2 layout plans, to connect with the rail infrastructure described in Works No. 1 including—

- (a) earthworks to achieve a terminal plateau;
- (b) access and circulation roads;
- (c) the construction of an intermodal rail freight loading/unloading terminal including but not exclusively:
 - (i) rail sidings to load/unload freight;
 - (ii) freight storage areas; and
 - (iii) gantry cranes and reach stackers;
- (d) railtracks and associated rail infrastructure;
- (e) drainage and attenuation ponds;
- (f) security fencing;
- (g) cripple sidings, rail freight terminal refuelling and maintenance areas;
- (h) alteration of the existing rail infrastructure including signalling;
- (i) terminal entry and exit gates, loading lanes, internal roads, gatehouses and parking areas;

- (j) rail freight terminal administrative building including staff and visitor welfare facilities;
- (k) storage and workshop buildings;
- (l) fuelling facility;
- (m) the removal and replacement of pipework and boreholes as shown on [];
- (n) works to accommodate removal of bridge over West Coast Mainline Loop railway; and
- (o) the stopping up of Gravelly Way.

Works No. 3

Within the area of land described on the works plans as Works No. 3—

(1) The construction of rail served warehousing (including ancillary offices and other buildings) within the areas annotated as Zones A1 to A7 on the parameters plans including—

- (a) earthworks to provide development plateaus;
- (b) construction of development plateaus;
- (c) demolition of building and structures;
- (d) warehouses and ancillary buildings such as gatehouses;
- (e) service yards and vehicle parking;
- (f) vehicle and pedestrian access routes;
- (g) solar energy provision;
- (h) vehicle maintenance units;
- (i) container storage;
- (j) ancillary buildings;
- (k) removal and replacement of telecommunication masts;
- (l) the removal and replacement of pipework and boreholes as shown on [];
- (m) drainage and attenuation structures;
- (n) landscaping and bunding;
- (o) signage; and
- (p) the stopping up of the length of Footpath 29 shown on the access and rights of way plans.

(2) The demolition of existing farmhouses and associated outbuildings.

Works No. 4

Within the area of land described on the works plans as Works No. 4—

The A5/A449 link road the general arrangement of which is shown on the highway general arrangement plans and [bridge plans] including—

- (a) footways and cycleways;
- (b) construction of a new three arm roundabout on the A5;
- (c) construction of a left in and left out junction with Harrisons Lane;
- (d) construction of a new four arm roundabout on the A449;
- (e) new bridges over the railway and canal as shown on the [bridge plans];
- (f) intermediate roundabout adjacent to Zone A4 as shown on the works plans linking with Works No.5;
- (g) amendments to Crateford Lane to create a one way road;
- (h) bus stops on the A5/A449 link road;
- (i) bus laybys on the A449;
- (j) works to accommodate removal of bridge over West Coast Mainline Loop railway; and
- (k) street lighting.

Works No. 5

Within the area of land described on the works plans as Works No. 5—

- (1) The construction of on site infrastructure including—
 - (a) principal on site private estate roads linking to Works No. 4 and 7;
 - (b) roundabout junctions;
 - (c) accesses from Vicarage Road;
 - (d) footways and cycleways;
 - (e) street lighting; and
 - (f) bus stop.
- (2) The demolition of buildings and structures.

PART 2

ASSOCIATED DEVELOPMENT

Associated development within the meaning of s115(2) (development for which consent may be granted) of the 2008 Act comprising—

In the County of Staffordshire and the District of South Staffordshire—

Works No. 6

Within the area of land described on the works plans as Works No. 6—

The provision of structural landscaping and two community parks including—

- (a) a community park in the location identified as Croft Lane Community Park on the parameters plans;
- (b) a community park in two parts in the location identified as Calf Heath Community Park (South) and Calf Heath Community Park (North) on the parameters plans;
- (c) earthworks including the creation of screening bunds;
- (d) attenuation structures;
- (e) boundary treatments;
- (f) habitat creation;
- (g) demolition of buildings and structures;
- (h) retention of existing woodland;
- (i) removal of two steel pipe bridges and a cement bridge over the canal;
- (j) the removal and replacement of pipework and boreholes as shown on [];
- (k) amended access to Avenue Cottages;
- (l) the stopping up of the length of Footpath 29 shown on the access and rights of way plans;
- (m) the stopping up of Gravelly Way;
- (n) care parking facilities; and
- (o) cycle track adjustment to Zone A6.

Works No. 7

Within the area of land described on the works plans as Works No. 7—

Works to the public highway the general arrangement of which is shown on the highway general arrangement plans including—

- (p) works of improvements to the A5 including—

- (i) amendments to the existing A5 minerals access to facilitate amended access to Avenue Cottages; and
- (ii) upgrading of the existing footway on the north side of the A5;
- (q) works of improvement to the A449 including—
 - (i) removal of the A449/Station Drive right turn lane;
 - (ii) upgrading the cycleway/footway along the east side of the A449 from Station Drive to the A5;
 - (iii) laybys on the west side of the A449 between Gravelly Way and the A5;
- (r) access roundabout off Vicarage Road;
- (s) the addition of cycleway/footway along a length of Vicarage Road from the canal bridge to the new roundabout;
- (t) provision of HGV turning area on Station Drive to the west of the railway bridge;
- (u) the provision of three pedestrian crossing points along Straight Mile between Vicarage Road and Kings Road;
- (v) amendments to Crateford Lane to create a one way road; and
- (w) signage.

Works No. 8

Within the area of land described on the works plans as Works No. 8—

(1) Conversion of Gravelly Way Farm buildings to use for the purposes of estate management offices, amenity and welfare facilities with ancillary parking and landscaping.

(2) Provision of buildings for the storing of estate management plant and machinery and related workshop facilities.

Works No. 9a

Within the area of land described on the works plans as Works No. 9a—

[pylon works]

Works No. 9b

Within the area of land described on the works plans as Works No. 9b—

[pylon works]

Further works

The following further works—

- (1) Within the area of land described on the works plans as Works No.s 1 to 3 the provision of—
 - (a) weighbridges;
 - (b) internal estate roads, maintenance accesses and footways;
 - (c) cycle parking facilities;
 - (d) substations; and
 - (e) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (2) Within the area of land described on the works plans as Works No.s 1 to 6 and Works No. 8 the provision of—
 - (a) bunds, embankments, swales, landscaping and boundary treatments, earthworks and earthwork retaining structures;
 - (b) the provision of footways, cycle tracks, permissive cycle tracks, bridleways and footpath linkages;

- (c) water supply works, foul drainage provision, foul pumping stations, surface water management systems, balancing ponds (surface and underground), attenuation and culverting;
 - (d) connections to mains services and provision of utilities infrastructure including primary and secondary substations and pressure reducing stations;
 - (e) diversion and provision of utilities services;
 - (f) demolition of surface structures;
 - (g) fencing and the boundary treatments;
 - (h) temporary concrete batching plants;
 - (i) temporary construction compounds and materials and aggregate store;
 - (j) lighting;
 - (k) CCTV and ANPR; and
 - (l) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.
- (3) Within the area of land described on the works plans as Works No. 7 the provision of—
- (a) site clearance and excavation;
 - (b) fencing for boundary treatment and noise attenuation;
 - (c) safety barriers;
 - (d) surface water drainage works including swales, attenuation and culverting;
 - (e) ducting;
 - (f) bunds, embankments, cuttings, landscaping and boundary treatments, earthworks and earthwork retaining structures;
 - (g) pavements, surface treatments, kerbs and channels;
 - (h) the provision of footways, cycle tracks, bridleways and footpath linkages;
 - (i) traffic signs, traffic signals and road markings;
 - (j) street lighting and electrical equipment;
 - (k) retaining walls;
 - (l) diversion and provision of utilities services;
 - (m) temporary earthworks material stockpiles; and
 - (n) such other works as may be necessary or expedient for the purpose of or in connection with the construction of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 3

Time limit

1. The authorised development must not commence later than the expiration of 5 years beginning with the date that this Order comes into force.

Phases of development

2.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) is to commence until a written scheme setting out all the phases of the authorised development, has been submitted to and approved in writing by the local planning authority. The written scheme must include phasing details of—

- (a) earthworks;

- (b) ecological mitigation;
- (c) rail infrastructure;
- (d) roads within the main site;
- (e) surface water and foul drainage;
- (f) development plots;
- (g) landscaping; and
- (h) mains services,

and can be subject to amendment by agreement with the local planning authority.

(2) The authorised development must be carried out in accordance with the phasing as approved in writing by the local planning authority from time to time.

Sustainable transport

3. The provisions of the framework travel plan or any variation of such plan agreed by the travel plan steering group must be complied with at all times following the commencement of the authorised development.

Phasing of highway works

4. The undertaker must use reasonable endeavours to complete the highway works identified in column (1) of the table below by no later than the stage of development set out in column (3) of the table below or such alternative later triggers as are agreed by the relevant body identified in column (4).

Highway Works

(1) <i>Item as identified on the [] plans</i>	(2) <i>Description</i>	(3) <i>Stage of Development</i>	(4) <i>Relevant Body</i>
(i)	A5 Access Roundabout	To be completed prior to []	Highways England
(ii)	[]	To be completed prior to []	Highways England
(iii)	[]	To be completed prior to []	Staffordshire County Council

Detailed design approval

5.—(1) The details of each phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) must be in general accordance with the design and access statement. The design and access statement can be reviewed and updated by the undertaker in agreement with the local planning authority.

(2) The details of each phase must include details of the following where they are located within that phase—

- (a) rail infrastructure and rail terminal;
- (b) embankments and bunds;
- (c) hard landscaping, cycle tracks, footpaths and bridleways;
- (d) surface and foul drainage;
- (e) bicycle, motorcycle and vehicle parking;
- (f) built development design (including external materials and sustainable energy measures) and layout;

- (g) site levels and finished floor levels;
- (h) estate roads;
- (i) weighbridges;
- (j) gatehouses;
- (k) fencing walls and other means of enclosure (including acoustic fencing); and
- (l) substations.

(3) No part of the authorised development comprised in Works No. 8 shall be undertaken until details of the size and appearance of any buildings or other structures to be erected and details of any landscaping and hard surfacing have been submitted to and approved by the local planning authority.

6. No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) is to commence until the details of that phase required under requirement 5(2) have been submitted to and approved in writing by the local planning authority. The authorised development must be carried out in accordance with the details as approved in writing by the local planning authority.

Provision of landscaping

7.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) is to commence until a written landscaping scheme for that phase (including the strategic landscaping included within that phase) has been submitted to and approved in writing by the local planning authority. The landscaping scheme must be in general accordance with the parameters plans and must include details of all proposed soft landscaping works, including—

- (a) location, number, species, size, layout, method of large trees support, plant protection measures and planting density of any proposed planting;
- (b) cultivation, importation of materials and other operations to ensure plant establishment;
- (c) details of existing trees to be retained, with measures for their protection during the construction period in accordance with British Standard 5837:2012 “Trees in relation to Design, Demolition and Construction Recommendations”, and to include a schedule of remedial tree works to be carried out in accordance with British Standard 3998:2010
- (d) “Tree Works Recommendations” prior to construction commencing;
- (e) details of ecological mitigation;
- (f) implementation timetables; and
- (g) a landscape management plan setting out for a period of 20 years the arrangements for future maintenance including methods of funding and future monitoring, review and the maintenance of new trees, shrubs, hedgerows, woodlands and grassed areas and retained trees, shrubs, hedgerows, woodlands and grassed areas.

(2) All landscaping works included in a landscaping scheme approved under subparagraph (1) must be carried out and maintained in accordance with the landscaping scheme approved under subparagraph (1) to a reasonable standard in accordance with the relevant recommendations of British Standard 4428:1989 “Code of Practice for general landscape operations (excluding hard surfaces)” and British Standard 8545:2014 “Trees: from nursery to independence in the landscape – Recommendations”.

(3) Any tree or shrub planted as part of an approved landscape scheme that, within a period of 10 years after planting is removed, dies or becomes, in the opinion of the local 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 local planning authority gives consent to any variation.

Ecological Management and Mitigation Plan

8.—(1) No phase of the authorised development which includes ecological mitigation is to commence until a written ecological management and mitigation plan for that phase has been submitted to and approved in writing by the local planning authority. The management plan may be subject to alteration by agreement in writing by the local planning authority.

(2) The ecological management and mitigation plan approved under (1) must include an implementation timetable and must be carried out as approved in writing by the local planning authority.

(3) Any ecological works carried out under an ecological management and mitigation plan must be supervised by a suitably qualified person or body.

Demolition and Construction Environmental Management Plan

9.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) is to commence, including any preparatory earthworks or site levelling but excluding archaeological investigation soil movement geotechnical or ground contamination investigation and ecological mitigation works, until a Demolition and Construction Environmental Management Plan (“DCEMP”) for that phase of development, drafted in accordance with the principles set out in the outline demolition and construction environmental management plan, has been submitted to and approved in writing by the local planning authority. The DCEMP for each phase must include—

- (a) details of the methods to control noise arising from construction activities including—
 - (i) proposals for monitoring of construction noise;
 - (ii) proposals for the introduction of mitigation measures or alternative working practices where the measurements exceed acceptable limits; and
 - (iii) proposals for hours of construction and deliveries to and from the site.
- (b) details of a dust management plan setting out the methods to be used to control dust and other emissions including smoke from the site;
- (c) details of all temporary fencing, temporary buildings, compound areas and parking areas including arrangements for their removal following completion of construction;
- (d) details of areas to be used for the storage of plant and construction materials;
- (e) details of construction waste management including controlled wastes;
- (f) details of the facilities to be provided for the storage of fuel, oil and other chemicals, including measures to prevent pollution;
- (g) when a phase of the authorised development directly affects a watercourse or flood plain a construction working method statement for such element to cover all works in, over under or within 8 metres of the top of the bank of either watercourse or their floodplains;
- (h) details of lighting arrangements for construction and site security purposes;
- (i) measures to ensure that construction vehicles do not deposit mud and any other deleterious material on the public highway;
- (j) details of temporary mitigation measures to protect biodiversity interests within the site during the construction phases;
- (k) advisory signage at public access points advising of possible hazards including the potential for sudden noise;
- (l) details of any temporary surface water management system;
- (m) details of temporary stopping up of public rights of way and streets;
- (n) a traffic management plan; and
- (o) details of existing and proposed landscaping which need to be protected during construction.

(2) The DCEMP for each phase of development is to be reviewed and updated if necessary to address unacceptable impacts arising from construction works. Each DCEMP must be submitted by the undertaker for approval in writing by the local planning authority. All construction works must be carried out in accordance with the DCEMP as approved.

Earthworks

10. No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) is to commence until details of—

- (a) the earthworks strategy relating to that phase of development including the management and protection of soils;
- (b) an earthworks specification for each phase of the development;
- (c) cutting slopes and embankment design that would accord with the approved earthworks specification;
- (d) the extent of any material to be temporarily stored within the site; and
- (e) any surplus material to be removed from the site for disposal or material to be imported to the site,

have been approved in advance and in writing by the local planning authority. All earthworks must be carried out in accordance with the details as approved.

Archaeology

11. TO BE DETERMINED.

Lighting details

12.—(1) Prior to the commencement of each phase of the authorised development which includes permanent lighting (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)), details of the proposed permanent external lighting in that phase must be submitted to and approved in writing by the local planning authority or in the case of the highway works the relevant highway authority. The lighting details must accord with the principles established in the lighting strategy set out in Appendix 12.8 of the environmental statement.

(2) The approved lighting scheme must be implemented and maintained as approved in writing by the local planning authority or in the case of the highway works the relevant highway authority during operation of the authorised development and no external lighting other than that approved under this requirement may be installed.

(3) The details submitted under this requirement must include details of any lighting on any gantry cranes included in the phase concerned.

Building sustainability

13.—(1) No development of a warehouse may take place until a BREEAM Pre-Assessment Report based upon the BREEAM 2011 method (or equivalent) has been submitted to and approved in writing by the local planning authority demonstrating that the unit is expected to achieve at least a BREEAM 2011 “Very Good” rating (BREEAM Industrial 2008 “Excellent”).

(2) The development of each of the warehouses must be carried out in accordance with the details in the BREEAM Pre-Assessment Report (or equivalent) for that unit and a certificate must be provided within three months of completion or occupation (whichever is the sooner) of each warehouse confirming that the measures in respect of that warehouse committed to within the Pre-Assessment Report have been implemented.

Flood risk and surface water drainage

14. The authorised development must be carried out in accordance with the mitigation measures detailed within [sections [] and [] of the Flood Risk Assessment (Appendix 16.1 of the environmental statement)] and [section [] of the [Water Framework Directive Assessment]] submitted with the application as part of the environmental statement or be carried out in accordance with any variation to these measures agreed in writing with the Environment Agency, the lead local flood authority or the approving body under Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010(a), whichever of these is the body having jurisdiction over the watercourse in question.

15.—(1) No phase of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)) may commence until a surface water drainage scheme for that phase based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development in accordance with Chapter 16 of the environmental statement has been submitted to and approved in writing by the local planning authority or such other approval process that is put in place under the Flood and Water Management Act 2010. The scheme must be generally in accordance with the Flood Risk Assessment and Design Strategy contained in chapter [] of the environmental statement.

(2) The surface water drainage scheme must be implemented in accordance with the details approved by the local planning authority or in accordance with any variations to the details agreed in writing by the local planning authority prior to the completion of the authorised development.

Foul water drainage

16. Prior to the commencement of the authorised development (with the exception of the highway works which are governed by Parts 2 and 3 of Schedule 15 (*protective provisions*)), excluding earthworks, archaeology works or ecological mitigation works, a foul water drainage strategy must be submitted to and approved in writing by the local planning authority. Except where it is constructed in accordance with the approved foul water drainage strategy, no phase of the authorised development is to commence until written details of the foul water drainage system for that phase have been submitted to and approved in writing by the local planning authority. Such details must be implemented as approved by the local planning authority.

Construction hours

17.—(1) Subject to sub-paragraph (2) construction and demolition works (which for the purposes of this requirement excludes archaeological investigations, landscaping works and any non-intrusive internal fit-out works but must include start up and shut down and deliveries) must not take place other than between 07:00 and 19:00 hours on weekdays and 07:00 and 13:00 hours on Saturdays, excluding public holidays, unless otherwise agreed in writing by the local planning authority. Outside the above periods the following working is permitted—

- (a) pre-planned construction works to highway or rail infrastructure requiring possessions where first notified to the local planning authority and local residents;
- (b) emergency works; and
- (c) works which do not cause noise that is audible at the boundary of the Order limits.

(2) Regardless of sub-paragraph (1) no piling operations are to take place after 18:00 hours unless otherwise agreed in writing by the local planning authority.

(3) Any emergency works carried out under sub-paragraph (1)(b) must be notified to the local planning authority within 72 hours of their commencement.

Construction noise

18. TO BE DETERMINED.

Noise during the operational phase

19. TO BE DETERMINED.

Contamination risk

20.—(1) No phase of the authorised development is to commence until a localised contamination report for that phase has been submitted to and approved in writing by the local planning authority.

(2) No development is to commence on any specifically identified localised areas of the site potentially affected by contamination (as detailed in Chapter 11 of the environmental statement until a written scheme of any further investigation considered necessary has been undertaken in line with the recommendations made for that localised area of the site and this has been submitted to and approved in writing by the local planning authority and any further investigation required completed.

(3) Should any unacceptable risks be identified during the further investigation, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the local planning authority. The Remedial Scheme must be prepared in accordance with the requirements of CLR 11. The Verification Plan must be prepared in accordance with the requirements of—

- (a) Evidence Report on the Verification of Remediation of Land Contamination Report SC030114/R1, published by the Environment Agency 2010; and
- (b) CLR 11.

(4) If, during the course of development, previously unidentified contamination is discovered, development must cease on that localised area of the site and the contamination must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of development on that localised area of the site, suitable investigation for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the local planning authority. The development must then be implemented in accordance with the details approved by the local planning authority and, unless otherwise agreed in writing by the local planning authority, retained as such in perpetuity.

21.—(1) Prior to the commencement of use of any part of the completed development with the exception of the highway works either—

- (a) if no remediation scheme or verification was required under requirement [] (contamination risk) a statement from the undertaker, or their approved agent, must be provided to the local planning authority, stating that no previously unidentified contamination was discovered during the course of development; or
- (b) if a remediation scheme and verification plan were agreed under requirement [], a Verification Investigation must be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development must be submitted to and approved in writing by the local planning authority.

(2) The Verification Investigation Report must—

- (a) contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- (b) contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- (c) contain details of imported material to show that it is suitable for its proposed use;
- (d) demonstrate the effectiveness of the approved Remedial Scheme; and
- (e) include a statement signed by the undertaker, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

Waste management during the operational phase

22. No part of the authorised development may be brought into use until a scheme for waste management during the operational phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved scheme must be implemented and maintained for the duration of the operation of the development.

23. The height of any stack of containers within the Order limits shall not exceed four in number.

SCHEDULE 3

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to highway works</i>
District of South Staffordshire	A5 – length within the Order limits
	A449 – length within the Order limits
	Vicarage Road – length within the Order limits
	Straight Mile – length within the Order limits
	Station Drive – length within the Order limits
	Harrisons Lane – length within the Order limits
	Crateford Lane – length within the Order limits
	Gravelly Way – length within the Order limits
	Four Ashes Road – length within the Order limits

SCHEDULE 4

Article 10

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
District of South Staffordshire	Gravelly Way	The existing highway within the area shown hatched red on the access and rights of way plans (Document 2.3[])	Proposed new highway within the area [between points A and B and shown tinted orange] on the access and rights of way plans (Document 2.3[])

SCHEDULE 5

Article 12

PUBLIC RIGHTS OF WAY TO BE STOPPED UP

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Parish of Penkridge	Public footpath Penkridge 29 (part)	The existing footpath [between the points [] and []] on the access and rights of way plans (Document 2.3[]) shown with a dashed red line

PART 2

NEW PUBLIC RIGHTS OF WAY TO BE CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way or permissive way to be created</i>	<i>(3)</i> <i>Extent of new public right of way or permissive way to be created</i>
Parish of []		
Parish of []		

SCHEDULE 6

Article []

PRIVATE MEANS OF ACCESS

PART 1

PRIVATE MEANS OF ACCESS TO BE REPLACED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Replacement</i>
District of South Staffordshire		

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PART 2

PRIVATE MEANS OF ACCESS TO BE CLOSED FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>
District of South Staffordshire	

PART 3

NEW PRIVATE MEANS OF ACCESS CREATED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Private Means of Access</i>
District of South Staffordshire	The private means of access hatched blue [and marked] on the access and rights of way plans (Document 2.3[])

SCHEDULE 7

Article 15

CLASSIFICATION OF ROADS

PART 1

NEW ROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of Street</i>	<i>(3)</i> <i>Classification</i>	<i>(4)</i> <i>Classes of Traffic</i>
In the District of South Staffordshire	A5/A449 link road as shown tinted brown between points marked [] and [] on the highway classification plans	Unclassified	All purpose

PART 2

EXISTING ROADS

(1) <i>Area</i>	(2) <i>Extent of Street</i>	(3) <i>(i) Current Classification (ii) Highway Authority</i>	(4) <i>Event determining change of classification</i>	(5) <i>Proposed Classification</i>	(6) <i>Classes of Traffic</i>	(7) <i>Highway Authority</i>
In the District of South Staffordshire		(i) All Purpose Trunk Road (ii) The Secretary of State for Transport		Special Road	Class I and Class II	Highways England
		(i) Special Road (ii) The Secretary of State for Transport		Trunk Road	All purpose	Highways England
		(i) All Purpose Trunk Road (ii) The Secretary of State for Transport		Unclassified Road	All Purpose	Staffordshire County Council

**SCHEDULE 8
SPEED LIMITS**

Article []

**PART 1
EXISTING ORDERS**

(1) <i>Statutory Instrument Title</i>	(2) <i>S.I. Number</i>	(3) <i>Changes</i>	(4) <i>Event</i>

**PART 2
ROADS SUBJECT TO 30MPH SPEED LIMIT**

(1)	(2)
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<i>Location</i>	<i>Length</i>
A5/A449 link road	Shown coloured pink [between points marked [] and []] as shown on the new speed limits plan.

PART 3

ROADS SUBJECT TO 50MPH SPEED LIMIT

<i>(1) Location</i>	<i>(2) Description</i>
A5	Shown coloured orange [between points marked [] and []] as shown on the new speed limits plan.

PART 4

ROADS SUBJECT TO 60MPH SPEED LIMIT

<i>(1) Location</i>	<i>(2) Description</i>
A449	Shown coloured green [between points marked [] and []] as shown on the new speed limits plan.

SCHEDULE 9

Article []

AMENDMENTS TO EXISTING ORDERS

<i>(1) Statutory Instrument/ Order Title</i>	<i>(2) Statutory Instrument Number if applicable</i>	<i>(3) Changes</i>	<i>(4) Event</i>

SCHEDULE 10

Article []

CLEARWAYS AND NO WAITING

PART 1

CLEARWAYS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Description</i>	<i>(3)</i> <i>Prohibition of waiting on verges</i>	<i>(4)</i> <i>Event</i>
		No	

PART 2

NO WAITING AT ANY TIME

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Event</i>

SCHEDULE 11

Article []

MOTOR VEHICLE RESTRICTIONS

PART 1

MOTOR VEHICLE ACCESS ONLY RESTRICTIONS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>

PART 2

ONE WAY STREETS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>	<i>(3)</i> <i>Direction</i>

PART 3

PROHIBITION OF ENTRY TO ABNORMAL LOADS LAYBY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>

PART 4

BUSES AND CYCLISTS ONLY

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Length</i>

SCHEDULE 12

Article []

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
District of South Staffordshire			Works No. []
			Works No. []
			Works No. []
			Works No. []

SCHEDULE 13

Article []

LAND TO WHICH POWERS TO EXTINGUISH RIGHTS DO NOT APPLY

(1) <i>Area</i>	(2) <i>Plot of land shown on Land Plan</i>	(3) <i>Relevant part of Authorised Development</i>
District of South Staffordshire		Works No. []
		Works No. []
		Works No. []
		Works No. []
		Works No. []

SCHEDULE 14

Article []

MODIFICATIONS 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 as respects compensation on the compulsory purchase of land and interests in land.

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

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

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

(3) In section 58(1)(b) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

(a) 1973 c. 26.

(b) Section 58(1) was amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where 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 to be made of the other land.”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular 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.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) 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.”.

5.—(1) For section 8 of the 1965 Act (provisions as to divided land) substitute—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs, the West Midlands Rail Freight Interchange Order 201X, in relation to that person, ceases to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat

in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. 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.

7. Section 11 (powers of entry) of the 1965 Act **(a)** is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 **(b)** (penalty for unauthorised entry) and 13 **(c)** (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act **(d)** (protection for interests of tenants at will, etc.) 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.

9. Section 22 of the 1965 Act (interests omitted from purchase) is 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.

SCHEDULE 15

Article []

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF RAILWAY INTERESTS

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- (a)** 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 (No. 1) and S.I. 2009/1307.
 - (b)** Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (c)** 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).
 - (d)** Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

PART 2
FOR THE PROTECTION OF HIGHWAYS ENGLAND

PART 3
FOR THE PROTECTION OF STAFFORDSHIRE COUNTY COUNCIL AS
HIGHWAY AUTHORITY

PART 4
FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED

PART 5
FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

PART 6
FOR THE PROTECTION OF THE SI GROUP

PART 7
FOR THE PROTECTION OF THE CANAL & RIVER TRUST

SCHEDULE 16
MISCELLANEOUS CONTROLS

Article [44]

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Four Ashes Limited (“the undertaker”) to construct, operate and maintain, the new West Midlands Rail Freight Interchange together with associated development. The undertaker is authorised by the Order to acquire compulsorily land and rights over land. The Order also authorises [the making of alterations to the highway network, stopping up and diversion of public rights of way and the discharge of water].

A copy of the plans and book of reference referred to in this Order and certified in accordance with article [] (*certification of plans etc.*) of this Order may be inspected free of charge at the offices of South Staffordshire Council at [].

DRAFT