
STATUTORY INSTRUMENTS

2018 No. 1020

INFRASTRUCTURE PLANNING

The Eggborough Gas Fired Generating Station Order 2018

Made - - - - 20th September 2018

Coming into force - - 12th October 2018

An application has been made to the Secretary of State under section 37 of the Planning Act 2008⁽¹⁾ (the “2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽²⁾ for an Order granting development consent.

The application was examined by a single appointed person, appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010⁽³⁾. The single appointed person has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

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- (1) [2008 c.29](#)
Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 ([c.20](#))
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- (2) [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](#)
, [S.I.](#)
[2013/755](#)
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[2014/469](#)
,
[2014/2381](#)
,
[2015/277](#)
,
[2015/1682](#)
,
[2017/524](#)
,
[2017/572](#)
and
[S.I. 2018/378](#)
.
- (3) [S.I. 2010/103](#)

The Secretary of State, has considered the report and recommendation of the single appointed person, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(4) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Eggborough Gas Fired Generating Station Order 2018 and comes into force on 12th October 2018.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(5);

“the 1965 Act” means the Compulsory Purchase Act 1965(6);

“the 1980 Act” means the Highways Act 1980(7);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(8);

“the 1990 Act” means the Town and Country Planning Act 1990(9);

, amended by
[S.I. 2012/635](#)
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(4) [S.I. 2009/2263](#)
. Regulation 3 was amended by
[S.I. 2012/635](#)
and
[S.I. 2012/787](#)
.
[S.I. 2009/2263](#)
was revoked by
[S.I. 2017/572](#)
but continues to apply to this application for development consent by virtue of transitional provisions contained in regulation 37(2) of that instrument.

(5) [1961 c.33](#)
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(6) [1965 c.56](#)
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(7) [1980 c.66](#)
..

(8) [1981 c.66](#)
.

(9) [1990 c.8](#)
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“the 1991 Act” means the New Roads and Street Works Act 1991(10);

“the 2008 Act” means the Planning Act 2008(11);

“the 2009 Act” means the Marine and Coastal Access Act 2009(12);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(13);

“access and rights of way plans” means the plans submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“application guide” means the application guide revision 10.0 dated March 2018 and certified as such by the Secretary of State for the purposes of this Order;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified as such by the Secretary of State for the purposes of this Order;

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

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

“Canal and River Trust” means the body of that name which is a company limited by guarantee (Company No. 07807276) and a registered charity (Charity Commission No. 1146792) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB;

(10) [1991 c.22](#)

(11) [2008 c.29](#)
. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 ([c.20](#))
. Part 7 was amended by S.I. [2017/16](#)

(12) [2009 c.23](#)

(13) [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](#)
, [S.I. 2013/755](#) and
[S.I. 2017/572](#)

“combined heat and power assessment” means the combined heat and power assessment certified as such by the Secretary of State for the purposes of this Order;

“commence” means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commercial use” means that the commissioning of the authorised development has been completed and it is generating electricity on a commercial basis;

“Eggborough Power Limited” means Eggborough Power Limited (Company No. 03782700) whose registered office is at Eggborough Power Station, Eggborough, Goole, East Yorkshire, DN14 0BS;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“the environmental statement” means the environmental statement certified as such by the Secretary of State for the purposes of this Order;

“environmental statement commitments register” means the document of that name dated May 2017 and appended to the environmental statement as appendix 21A;

“the flood risk assessment” means the flood risk assessment certified as such by the Secretary of State for the purposes of this Order;

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

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

“the indicative landscaping and biodiversity strategy” means the indicative landscaping and biodiversity strategy certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans certified as the land plans by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of the authorised development, to the extent that such activities have been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Order land” means the land delineated and marked as such on the land plans;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(14);

“plot” means the plots listed in the book of reference and shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 to this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act for which purposes “highway authority” has the meaning given in this article;

“street works” means the works listed in article 8(1)

;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Eggborough Power Limited or the person who for the time being has the benefit of this Order in accordance with articles

6

and

7

;

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

“working day” means any day other than a Saturday, Sunday or English bank or public holiday; and

“the works plans” means the works plans 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 to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with 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.

(3) The definitions in paragraph

(1)

do not apply to Schedule 13 (deemed marine licence under Part 4 (marine licensing) of the 2009 Act).

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

(5) All areas described in square metres in the book of reference are approximate.

(6) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans.

(7) The expression “includes” is to be construed without limitation unless the contrary intention appears.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation shown for each work number on the works plans.

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker may at any time maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

5.—(1) The undertaker is hereby authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any other legislation that may be required from time to time to authorise the operation of a generating station.

Benefit of the Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of Eggborough Power Limited.

(2) Paragraph (1) does not apply to—

- (a) Work No. 3B in relation to which this Order has effect for the benefit of Eggborough Power Limited and NGET; and
- (b) Work No. 7A in relation to which this Order has effect for the benefit of Eggborough Power Limited and NGG.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (4) the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed in writing by the undertaker and lessee.

(2) Where such a transfer or grant has been made in accordance with paragraph (1)

references in this Order to the undertaker, except in paragraph (3)

include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph

(1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers in paragraph (1)

except where—

(a) the transferee or lessee is—

(i) the holder of a licence under section 6 of the Electricity Act 1989(15);

(ii) in relation only to a transfer or lease of Work No. 6 or Work No. 7, the holder of a licence under section 7 of the Gas Act 1986(16); or

(iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order land; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph

(4) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph

(1)

(6) The notification referred to in paragraph

(5) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph

(15) 1989 c.29

(16) 1986 c.44

Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20)

- (7) , the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3) , the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

PART 3

STREETS

Street works

- 8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) 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, change its position or remove it; and
 - (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).
- (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.
- (3) Where the undertaker carrying out any works pursuant to paragraph (1) is not the street authority the provisions of sections 54 to 106 of the 1991 Act apply to any such works.

Power to alter layout, etc., of streets

- 9.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3).
- (2) Without prejudice to the specific powers conferred by paragraph (1)

but subject to paragraphs

(3)

and

(4)

the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street shown on the access and rights of way plans or within the Order limits and, without limitation on the scope of this paragraph—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph

(2)

may not be exercised without the consent of the street authority.

(5) Paragraphs

(3)

and

(4)

do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the access to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article

9(3)

(power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (those works to restore the temporary accesses which will be maintained by the street authority) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph

(4)

, a court must in particular have regard to the following matters—

(a) the character of the street including the traffic which was reasonably to be expected to use it;

- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

- (6) Nothing in this article—
 - (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Temporary stopping up of streets, public rights of way and public rights of navigation

11.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily stop up, alter or divert any street or public right of way shown on the access and rights of way plans or within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

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

- (3) Without prejudice to the generality of paragraph (1)

, the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule and the public rights of way specified in column (2) of Part 1 of Schedule 7 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of Part 1 of that Schedule.

- (4) The undertaker may not temporarily stop up, alter or divert—
 - (a) any street, public right of way specified in paragraph (3) without first consulting the highway authority; and
 - (b) any other street or public right of way without the consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent.

(5) 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.

(6) Without prejudice to the scope of paragraph

(1)

, the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily suspend the public rights of navigation in relation to the areas specified in column (4) of Part 2 of Schedule 7 (public rights of navigation to be temporarily suspended) for the purposes of constructing or carrying out the work listed at column (3) of that Part 2 of Schedule 7.

(8) The undertaker must give reasonable notice to the CRT prior to the proposed commencement date of any suspension of the public rights of navigation under paragraph

(7)

, the undertaker must give notice to the Canal and River Trust.

(9) Following a receipt of a notice relating to a suspension pursuant to paragraph

(8)

the Canal and River Trust must issue a notice to mariners giving the commencement date and other particulars of the suspension to which the notice or consent relates, and that suspension takes effect on the date specified and as otherwise described in the notice.

(10) During the period that public rights of navigation are temporarily suspended under this article, the undertaker must upon application allow reasonable access to the area where such rights of navigation would otherwise apply subject to such conditions as the undertaker may reasonably impose.

(11) The undertaker may not exercise the powers of paragraph

(7)

of this article after the completion of construction of the authorised development.

(12) The powers in paragraph

(7)

are subject to Part 3 (Protective Provisions for the Protection of the Canal and River Trust) of Schedule 12.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent alteration of layout);
- (b) form and lay out the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access 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.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;

- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge or tunnel carrying a street;
 - (d) any stopping up, alteration or diversion of a street authorised by this Order;
 - (e) the undertaking in the street of any of the works referred to in article [10\(1\)](#) (construction and maintenance of new or altered means of access); and/or
 - (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; and/or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.
- (2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph [\(1\)](#)
-
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) specify 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

14.—(1) 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 pursuant to paragraph

[\(1\)](#) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991([17](#)) (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 such terms and conditions as that person may reasonably impose.

(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 approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as authorised under this Order, the undertaker must not, in carrying out or maintaining works, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(17) [1991 c.56](#)

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(18).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(19) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(20) have the same meaning as in that Act.

Authority to survey and investigate the land

15.—(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 prejudice to the generality 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 prejudice to the generality 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 fourteen days’ notice has been served on every owner and occupier of the land.

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

- (a) must, if so required entering the land, 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 are to be made under this article—

(18) S.I. 2016/1154

(19) 1964 c.40

Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act

1992 (c.42)

, section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(20) 1991 c.57

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

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

Removal of human remains

16.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within fifty-six days after the first publication of a notice under paragraph (2)

any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4)

, and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4)

is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of fifty-six days referred to in paragraph (4)

no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or

- (b) such notice is given and no application is made under paragraph (6) within fifty-six days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of fifty-six days; or
- (c) within fifty-six days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

- (9) If the undertaker is satisfied that any person giving notice under paragraph (4)

is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

- (10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3)

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(21) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

(21) 1857 c.81
Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1
s.2. There are other amendments to this Act which are not relevant to this Order.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served in accordance with section 134 of the 2008 Act or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article
20
(compulsory acquisition of rights), article
26
(temporary use of land for carrying out the authorised development) and article
42
(Crown rights).

(4) Nothing in this article or articles
18
(statutory authority to override easements and other rights),
20
(compulsory acquisition of rights),
21
(private rights) or article
28
(statutory undertakers) permits the undertaker to exercise any powers of compulsory acquisition in respect of plots 25, 45, 60, 65, 110, 115, 130, 140, 395, 405, 475, 485, 570 and 605.

(5) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article
28
(statutory undertakers) applies.

Statutory authority to override easements and other rights

18.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) 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 and include restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

(6) This article is subject to article 17(4).

Time limit for exercise of authority to acquire land compulsorily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph

(1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

20.—(1) Subject to paragraph

(2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article

17 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land as are specified in column 2 of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provision as to divided land), where the undertaker acquires a right over land under paragraph

(1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase for creation of new rights) 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 of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5)

is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) This article is subject to article 42

(Crown rights) and article 17(4)

(8) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

Private rights

21.—(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 earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of 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 (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this Order is entitled to compensation 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 or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28

(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 over land;

(ii) the undertaker's appropriation of it;

(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; and

(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 such agreement as is 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) This article is subject to article

17(4)

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied, has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) there is substituted—

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

(4) Omit section 5 (earliest date for execution of declaration).

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article

19

of the Eggborough Gas Fired Generating Station Order 2018”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—

“(1b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article

[24](#)

(application of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article

[17](#)

(compulsory acquisition of land) and paragraph (1) of article

[20](#)

(compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph

[\(1\)](#)

, the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph

[\(2\)](#)

must not prevent Schedule 2A to the 1965 Act (as modified by article

[24](#)

(4) or paragraph 10 of Schedule 9 as the case may be) from applying where the undertaker acquires any part of, or rights in, a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article

[19](#)

of the Eggborough Gas Fired Generating Station Order 2018”.

(3) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article

[19](#)

of the Eggborough Gas Fired Generating Station Order 2018”.

(4) Except where paragraph 10 of Schedule 9 applies by virtue of article 20(4), in Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraph 1(2) and 14(2); and
- (b) at the end insert—

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article

[26](#)

(temporary use of land for carrying out the authorised development), Article

[27](#)

(temporary use of land or Article

[32](#)

(protective works to buildings), for maintaining the authorised development) of the Eggborough Gas Fired Generating Station Order 2018”.

Rights under or over streets

25.—(1) The undertaker may enter upon 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

[\(2\)](#)

is not to 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 is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph

[\(1\)](#)

is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be 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 of the 1991 Act (sharing cost of necessary measures) 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

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Schedule 10, or any mitigation works.

(2) Not less than fourteen 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—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be 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 as to a person's entitlement to compensation under paragraph

(5)

, or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph

(1)(a)(i)

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to 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 (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10.

(12) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017⁽²²⁾ do not apply insofar as they relate to temporary possession of land under this Article or Article 27 (temporary use of land for maintaining the authorised development).

Temporary use of land for maintaining the authorised development

27.—(1) Subject to paragraph

(2)

, at any time during the maintenance period (as defined in paragraph 11) 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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(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 twenty-eight 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 only remain in possession of land under this article 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.

(22) 2017 c.20

(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 provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to 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 (further provisions as to compensation for injurious affection) 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 to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to 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 (application of compulsory acquisition provisions).

(11) In this article "the maintenance period" means the period of 5 years beginning with the date on which that part of the authorised development is first operational.

Statutory undertakers

28. Subject to article

17(4)

and the provisions of Schedule 12 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Apparatus and rights of statutory undertakers in stopped up streets

29. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article

10

(construction and maintenance of new or altered means of access) or article

11

(temporary stopping up of streets, public rights of way and public rights of navigation) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph

(1)

does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article [29](#)

(apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(23); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Felling or lopping of trees

31.—(1) The undertaker may fell or lop any tree or shrub 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 or shrub from—

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

(2) In carrying out any activity authorised by paragraph

(1)

, the undertaker must do no unnecessary damage to any tree or shrub 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, is to be determined under Part 1 of the 1961 Act.

(23) 2003 c.21

(4) The undertaker may not pursuant to paragraph (1) fell or lop a tree within the extent of the publicly maintainable highway without the consent of the highway authority.

(5) Save in the case of emergency, the undertaker must not less than fourteen days before entering any land pursuant to paragraph

(1) serve notice of the intended entry on the owners and occupiers and, where the land is highway maintainable at the public expense, on the highway authority.

Protective works to buildings

32.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the start of commercial use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph

(1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs

(5)

and (6)

)—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph

(a)

or

(c)

, specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph

(5)(a)

,

(5)(c)

or

(5)(d)

, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article

41

(arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first in commercial use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph

(7)

or

(8)

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

(11) In this article “protective works” in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

PART 7

MISCELLANEOUS AND GENERAL

Protective provisions

33. Schedule 12 (protective provisions) has effect.

Deemed marine licence

34. The marine licence set out in Schedule 13 is deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensable marine activities (as defined in section 66 of the 2009 Act) set out in Part 2, and subject to the conditions set out in Part 3, of the licence.

Application of landlord and tenant law

35.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

36. Development consent granted by this Order 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).

Defence to proceedings in respect of statutory nuisance

37.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (24)(summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(24) 1990 c.43
; there are amendments which are not relevant to this Order.

- (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 is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽²⁵⁾; 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 reasonably be avoided.

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

Certification of plans etc

38.—(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
- (b) the book of reference;
- (c) the combined heat and power assessment;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the land plans;
- (g) the works plans;
- (h) the indicative landscaping and biodiversity strategy;
- (i) the indicative lighting strategy; and
- (j) the application guide

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

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

Service of notices

39.—(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

(25) 1974 c.40

. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(8)

, by electronic transmission.

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽²⁶⁾ (references to service by post) 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 an 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 the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the 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 to be 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 seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

(8)

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven 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.

(26) 1978 c. 30

Procedure in relation to certain approvals etc

40.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority, or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 11 (Procedure for discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph

(1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

(3) Schedule 11 (Procedure for discharge of requirements) is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority pursuant to the requirements.

Arbitration

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

Crown rights

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Guarantees in respect of payment of compensation

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph

(2) in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land and the amount of that guarantee has been approved by the Secretary of State; or
 - (b) an alternative form of security and the amount of that security for that purpose has been approved by the Secretary of State.
- (2) The provisions are—
- (a) article [17](#)
(compulsory acquisition of land);
 - (b) article [20](#)
(compulsory acquisition of rights etc);
 - (c) article [21](#)
(private rights);
 - (d) article [25](#)
(rights under or over streets);
 - (e) article [26](#)
(temporary use of land for carrying out the authorised development);
 - (f) article [27](#)
(temporary use of land for maintaining the authorised development); and
 - (g) article [28](#)
(statutory undertakers).
- (3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.
- (4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy

20th September 2018

SCHEDULES

SCHEDULE 1

Article

3

AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development within the meaning of s115(2) of the 2008 Act, comprising—

Work No. 1 – an electricity generating station located on land at the Eggborough Power Station site, near Selby, North Yorkshire, fuelled by natural gas and with a gross output capacity of up to 2,500 megawatts at ISO conditions comprising—

- (a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—
 - (i) up to three combined cycle gas turbine units;
 - (ii) turbine hall buildings for gas turbines and steam turbines;
 - (iii) heat recovery steam generators;
 - (iv) gas turbine air intake filters;
 - (v) emissions stacks;
 - (vi) transformers;
 - (vii) deaerator and feed water pump buildings;
 - (viii) nitrogen oxide emissions control equipment and chemical storage;
 - (ix) chemical sampling / dosing plant;
 - (x) demineralised water treatment plant, including storage tanks;
 - (xi) gas reception facility, including gas supply pipeline connection works, gas receiving area, gas compression equipment and building, pipeline internal gauge launcher for pipe inspection, emergency shutdown valves, gas vents and gas metering, dehydration and pressure reduction equipment;
 - (xii) auxiliary boilers and stacks;
 - (xiii) standby diesel generators; and
 - (xiv) continuous emissions monitoring system,
- (b) **Work No. 1B** – a peaking plant and black start plant, fuelled by natural gas and with a combined gross output capacity of up to 299 megawatts at ISO conditions, comprising—
 - (i) a peaking plant comprising up to two open cycle gas turbine units or up to ten reciprocating gas engines;
 - (ii) a black start plant comprising one open cycle gas turbine unit or up to three reciprocating gas engines;
 - (iii) diesel generators for black start plant start-up prior to gas-firing;
 - (iv) buildings for peaking plant and black start plant;
 - (v) gas turbine air intake filters;
 - (vi) continuous emissions monitoring system;

- (vii) transformers; and
- (viii) emissions stacks,
- (c) **Work No. 1C** – combined cycle gas turbine plant cooling infrastructure, comprising—
 - (i) up to three banks of cooling towers;
 - (ii) cooling water pumps, plant and buildings; and
 - (iii) cooling water dosing and sampling plant and buildings,
- (d) in connection with and in addition to Work Nos. 1A, 1B and 1C—
 - (i) administration and control buildings;
 - (ii) diesel fuel storage tanks and unloading area;
 - (iii) pipework, pipe runs and pipe racks;
 - (iv) an electrical substation, electrical equipment, buildings and enclosures;
 - (v) auxiliary plant, buildings, enclosures and structures;
 - (vi) workshop and stores buildings;
 - (vii) fire fighting equipment, buildings and distribution pipework;
 - (viii) fire and raw water storage tanks;
 - (ix) fire water retention basin;
 - (x) chemical storage facilities;
 - (xi) lubrication oils and grease storage facilities;
 - (xii) permanent plant laydown area for operation and maintenance activities;
 - (xiii) closed circuit cooling water plant and buildings;
 - (xiv) waste water treatment plant and building; and
 - (xv) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work Nos. 3, 4, 5, and 6, and parts of Work Nos. 1A, 1B and 1C.

and further associated development in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising—

Work No. 2 comprising—

- (e) **Work No. 2A** – temporary construction and laydown area comprising hard standing, laydown and open storage areas, backfilling of the lagoon, contractor compounds and construction staff welfare facilities, gatehouse and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and, closed circuit television cameras and columns; and
- (f) **Work No. 2B** – carbon capture readiness reserve space.

Work No. 3 – electrical connection works comprising—

- (g) **Work No. 3A** – up to 400 kilovolt underground electrical cables and control systems cables to and from the existing National Grid substation; and
- (h) **Work No. 3B** – works within the existing National Grid substation, including underground and over ground cables, connections to busbars and new, upgraded or replacement equipment.

Work No. 4 – cooling water connection works, comprising works to the existing cooling water supply and discharge pipelines and intake and outfall structures, including, as necessary, new,

upgraded or replacement pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables.

Work No. 5 – groundwater and towns water supply connection works, including works to the existing towns water pipelines and groundwater boreholes and pipelines, replacement and new pipelines, plant, buildings, enclosures and structures and underground electrical supply cables, transformers and control systems cables.

Work No. 6 – gas supply pipeline connection works for the transport of natural gas to Work No. 1, comprising an underground high pressure steel pipeline of up to 1,000 millimetres (nominal bore) in diameter and approximately 4.6 kilometres in length, including cathodic protection posts, marker posts and underground electrical supply cables, transformers and control systems cables running from within the Eggborough Power Station site, north under the River Aire to a connection point with the National Transmission System for gas No. 29 Feeder pipeline west of Burn Village.

Work No. 7 – an above ground installation west of Burn Village, connecting the gas supply pipeline (Work No. 6) to the National Transmission System No. 29 Feeder pipeline, comprising—

- (i) **Work No. 7A** – a compound for National Grid’s apparatus, comprising—
 - (i) an offtake connection from the National Transmission System;
 - (ii) above and below ground valves, flanges and pipework;
 - (iii) an above or below ground remotely operated valve;
 - (iv) an above or below ground remotely operated valve bypass;
 - (v) an above or below ground pressurisation bridle;
 - (vi) instrumentation and electrical kiosks; and
 - (vii) telemetry equipment kiosks and communications equipment,
- (j) **Work No. 7B** – a compound for the undertaker’s apparatus, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) an above or below ground isolation valve;
 - (iii) an above or below ground pipeline inline gauge launching facility;
 - (iv) instrumentation and electrical kiosks; and
 - (v) telemetry equipment kiosks and communications equipment,
- (k) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, closed circuit television cameras and columns and perimeter landscaping.

Work No. 8 – retained landscaping comprising—

- (l) soft landscaping including planting;
- (m) biodiversity enhancement measures; and
- (n) security fencing, gates, boundary treatment and other means of enclosure.

Work No. 9 – surface water drainage connection to Hensall Dyke, comprising works to install, repair or replace drainage pipes and works to Hensall Dyke.

Work No. 10 – vehicular, pedestrian and cycle access works and rail infrastructure including alterations to or replacement of the existing private rail line, installation of new rail lines and crossover points and ancillary equipment.

In connection with and in addition to Works Nos. 1 to 7 and Work Nos. 9 and 10, further associated development including—

- (o) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (p) electrical, gas, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (q) hard standing and hard landscaping;
- (r) soft landscaping, including embankments and planting;
- (s) biodiversity enhancement measures;
- (t) security fencing, gates, boundary treatment and other means of enclosure;
- (u) external lighting, including lighting columns;
- (v) gatehouses and weighbridges;
- (w) closed circuit television cameras and columns and other security measures;
- (x) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (y) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (z) vehicle parking and cycle storage facilities;
- (aa) accesses, roads and pedestrian and cycle routes;
- (bb) tunnelling, boring and drilling works;
- (cc) and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article

3

REQUIREMENTS

Interpretation

1. In this schedule—

“carbon capture readiness reserve space” means the area comprised in Work No. 2B shown on the works plans;

“commissioning” means the process of assuring that all systems and components of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker, and “commission” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995(27);

“existing coal-fired power station” means the Eggborough coal-fired power station which, at the date of this Order, is located both within the Order limits and within the immediate vicinity of the Order limits;

“Highways England” means Highways England Company Limited or such other person who is appointed as the strategic highways company in respect of the M62 motorway pursuant to section 1 of the Infrastructure Act 2015(28);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010(29);

“Marine Management Organisation” means the body of that name created by section 1 of the 2009 Act;

“North Yorkshire Police” means the police force for the area in which the authorised development is located pursuant to section 1 of the Police Act 1996(30);

“North Yorkshire County Council” means the county council for the area in which the authorised development is located pursuant to section 1 of the Local Government Act 1972(31);

“a part” of the authorised development means any part of Works Nos. 1-10;

“permitted preliminary works” means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 to the extent that those are within the area of the existing coal-fired power station, consisting of environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

“shut-down period” means a period after construction works have finished during which activities including changing out of work wear, the departure of workers, post-works briefings and closing and securing the site take place;

“Sport England” means the non-departmental public body of that name of 21 Bloomsbury Street, London, WC1B 3HF;

“start-up period” means a period prior to construction works commencing during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place; and

“Yorkshire Wildlife Trust” means Yorkshire Wildlife Trust (company registration number 409650 and registered charity number 210807) of 1 St. George’s Place, York, YO24 1GN.

(27) 1995 c.25

(28) 2015 c.7

(29) 2010 c.29

(30) 1996 c.16

(31) 1972 c.70

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days' notice of its intention to commence the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commissioning is started.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.

Notice of commencement of commercial use and requirement for cessation of existing coal-fired power station electricity generation

4.—(1) Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commercial use is started.

(2) The authorised development must not enter commercial use if the existing coal-fired power station has not ceased to generate electricity.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph

(d)

after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes; and
- (e) surface water management.

(2) Prior to commencing any part of Work No. 1 the undertaker must notify the relevant planning authority as to whether it is to construct that part in accordance with the design parameters in Part 1 of Schedule 14 (single-shaft parameters) or Part 2 of Schedule 14 (multi-shaft parameters), and the design parameters notified pursuant to this paragraph are the “relevant parameters” for the purposes of this requirement.

(3) Work No. 1 must be carried out in accordance with the relevant parameters.

(4) No part of the authorised development comprised in Work No. 2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraphs

(a)

,

- (d)
and
(e)
after consultation with the highway authority, approved by the relevant planning authority—
- (a) hard standings, laydown and open storage areas;
 - (b) contractor compounds and construction staff welfare facilities;
 - (c) gatehouse;
 - (d) vehicle parking and cycle storage facilities;
 - (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes;
 - (f) surface water drainage; and
 - (g) the area to be reserved as the carbon capture readiness reserve space.
- (5) No part of the authorised development comprised in Work No. 3, save for the permitted preliminary works, may commence until details of the following for that part have been submitted to and approved by the relevant planning authority—
- (a) the route and method of installation of the 400 kilovolt underground electrical cables to the existing National Grid substation; and
 - (b) the connections within the existing National Grid substation, including the underground and overground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment.
- (6) No part of the authorised development comprised in Work No. 4 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the Environment Agency, the Marine Management Organisation and the Canal and River Trust, approved by the relevant planning authority—
- (a) the route and method of construction of any upgraded or replacement cooling water supply and discharge pipelines;
 - (b) the method of construction, siting, layout, scale and external appearance of any upgraded or replacement intake and outfall structures within the River Aire, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009⁽³²⁾ and any ancillary plant, buildings, enclosures or structures; and
 - (c) the method and timing of installation and removal of the cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the River Aire.
- (7) No part of the authorised development comprised in Work No. 5 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority and Sport England, approved by the relevant planning authority—
- (a) the route and method of construction of any upgraded or replacement ground and towns water supply pipelines;
 - (b) the method of construction, siting, layout, scale and external appearance of any upgraded or replacement ancillary plant, buildings, enclosures or structures;
 - (c) measures to minimise disruption to users of the Eggborough Sports and Social Club recreational and sports facilities; and
 - (d) the reinstatement of the land to allow for continued recreational and sports use.

(32) [S.I 2009/3344](#)

(8) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority and the Environment Agency, approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) vehicle parking facilities;
- (d) the route and method of installation of the high pressure steel pipeline and any electrical supply, telemetry and other apparatus, including under and within the footprint of any flood defences;
- (e) the approximate number and location of cathodic protection posts and marker posts; and
- (f) surface water drainage.

(9) No part of the authorised development comprised in Work No. 7 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph

(d)

after consultation with the highway authority, approved by the relevant planning authority—

- (a) the method of connecting the gas supply pipeline to the National Transmission System No. 29 Feeder pipeline;
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities; and
- (e) surface water drainage.

(10) No part of the authorised development comprised in Work No. 9 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the relevant internal drainage board, been approved by the relevant planning authority—

- (a) the alterations, repairs to or replacement of surface water drainage pipes to Hensall Dyke; and
- (b) any works to Hensall Dyke.

(11) No part of the authorised development comprised in Work No. 10 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and after consultation with the highway authority approved by the relevant planning authority—

- (a) works to vehicular, cycle and pedestrian access; and
- (b) the alterations to or replacement of the existing private rail lines, new rail lines, crossover points and ancillary equipment.

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Landscaping and biodiversity protection management and enhancement

6.—(1) No part of the authorised development may commence until a landscaping and biodiversity protection plan for that part has been submitted to and, after consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority.

- (2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—
- (a) measures to protect existing shrub and tree planting that is to be retained; and
 - (b) biodiversity and habitat mitigation and impact avoidance.
- (3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.
- (4) No part of the authorised development may be commissioned until a landscaping and biodiversity management and enhancement plan for that part has been submitted to and, after consultation with North Yorkshire County Council and the Yorkshire Wildlife Trust, approved by the relevant planning authority.
- (5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—
- (a) implementation and management of all new shrub and tree planting;
 - (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
 - (c) measures to enhance biodiversity and habitats;
 - (d) an implementation timetable; and
 - (e) annual landscaping and biodiversity management and maintenance.
- (6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.
- (7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity strategy.
- (8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Public rights of way diversions

- 7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that part has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.
- (2) The plan must include details of—
- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and
 - (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.
- (3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

External lighting

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement

29

) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement

29

) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs

(1)

and

(2)

of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph

(1)

must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and where temporary, reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be brought into commercial use until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph

(3)

must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

10.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development in accordance with the details approved pursuant to sub-paragraph

(1)

(3) No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

Site security - above ground installation (Work No. 7)

11.—(1) No part of the authorised development comprised in Work No. 7 may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and, after consultation with North Yorkshire Police, approved by the relevant planning authority.

(2) The approved scheme must be maintained and operated throughout the operation of Work No. 7.

Fire prevention

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas within the authorised development, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire suppression measures and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

Surface and foul water drainage

13.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems, including means of pollution control in accordance with the construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph

(1)

must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to paragraphs

(1)

and

(3)

of this requirement must be in accordance with the principles set out in chapter 11 and appendix 11A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph

(3)

must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

14.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to, and after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph

(1)

must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to paragraphs

(1)

and

(3)

of this requirement must be in accordance with the principles set out in chapter 11 and appendix 11A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph

(3)

must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the Environment Agency, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph

(6)

must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

15.—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal

with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 12 of the environmental statement and the environmental statement commitments register and must be included in the construction environmental management plan submitted pursuant to requirement

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(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a materials management plan, which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

16.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 13 of the environmental statement.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

(a) in accordance with the approved scheme; and

(b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with North Yorkshire County Council unless otherwise agreed with the relevant planning authority.

Protected species

17.—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part must commence until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority.

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Construction environmental management plan

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with appendix 5A of the environmental statement and the indicative landscaping and biodiversity strategy and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions; and
- (f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

19.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

20.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 14 of the environmental statement and the framework construction traffic management plan contained in appendix 14A to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
 - (c) the construction programme;
 - (d) details of the likely programme for the demolition of the existing coal-fired power station and, in the event that peak traffic numbers from each of that project and the construction of the authorised development are likely to coincide and give rise to potentially significant effects, details of measures within the undertaker's direct control, to ensure that significant effects arising from the combined traffic on local roads are where possible avoided, reduced or mitigated; and
 - (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.
- (4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.
- (5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 14 of the environmental statement and the framework construction workers travel plan contained in appendix 14A of the environmental statement.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

22.—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and

- (b) 0800 to 1300 hours on a Saturday.
- (3) The restrictions in sub-paragraphs
 - (1) and
 - (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—
 - (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 23;
 - (b) are carried out with the prior approval of the relevant planning authority; or
 - (c) are associated with an emergency.
- (4) The restrictions in sub-paragraph
 - (2) do not apply to the delivery of abnormal indivisible loads, where this is—
 - (a) associated with an emergency; or
 - (b) carried out with the prior approval of the relevant planning authority.
- (5) Sub-paragraph
 - (1) does not preclude—
 - (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
 - (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.
 - (6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise and vibration - construction

23.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

- (2) The scheme submitted and approved must specify—
 - (a) each location from which noise is to be monitored;
 - (b) the method of noise measurement;
 - (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
 - (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
 - (e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

24.—(1) No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than equal to the defined representative background sound level during the daytime and no greater than +5dB different to the defined representative background sound level during the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(3) The scheme submitted pursuant to sub-paragraph

(1)

must include a report setting out the extent to which the undertaker is able to achieve lower night time noise levels than those set out in sub-paragraph

(2)

and an explanation as to the levels that can be achieved.

(4) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(5) In this requirement “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700.

Piling and penetrative foundation design

25.—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

26.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant waste planning authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 17 and appendix 5A of the environmental statement.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

27.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with requirement 6(4).

Combined heat and power

28.—(1) The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a report (‘the CHP review’) updating the CHP assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs

(4)

and

(5)

apply in relation to a revised CHP review submitted under sub-paragraph

(6)

in the same way as they apply in relation to the CHP review submitted under sub-paragraph

(3).

Aviation warning lighting

29.—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until details of the aviation warning lighting to be installed

for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to paragraph
(1)
must be installed and operated in accordance with the approved details.

Air safety

30. No part of the authorised development may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Carbon capture readiness reserve space

31.—(1) Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker’s ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

Carbon capture readiness monitoring report

32.—(1) The undertaker must make a report (‘carbon capture readiness monitoring report’) to the Secretary of State—

- (a) on or before the date on which three months have passed from first commercial use; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement

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-
- (a) in the case of the first carbon capture readiness monitoring report, since this Order was made; and
 - (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement

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over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

Local liaison committee

33.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a ‘local liaison committee’).

(2) The undertaker must invite the relevant planning authority and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

Employment, skills and training plan

34.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to, and after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Ambient air monitoring

35.—(1) The authorised development must not be commissioned until a written scheme of air quality monitoring has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must provide for the monitoring of nitrogen oxides and must specify—

- (a) each location within the vicinity of Hensall at which air pollution is to be measured;
- (b) the equipment and method of measurement to be used; and
- (c) the frequency of measurement.

(3) The first measurement made in accordance with the scheme must be made not less than 12 months before the authorised development is brought into commercial use.

(4) Unless the relevant planning authority gives the undertaker notice under sub-paragraph

(6)

, the final measurement made in accordance with the scheme must be made at least 24 months after the first commercial use of the authorised development.

(5) The scheme must be implemented as approved.

(6) The relevant planning authority may, if it considers appropriate, give notice to the undertaker that the scheme is to be extended for the period specified in the notice, which may not be more than 24 months from the date of the final measurement in accordance with the scheme as originally approved.

(7) The relevant planning authority may not serve notice pursuant to sub-paragraph (6) after the date which is 18 months after the date that the authorised development is brought into commercial use.

(8) For each year during which measurements are made pursuant to this requirement, the undertaker must, within three months after the final measurement made in that year, provide the relevant planning authority with a report of measurements made in accordance with the scheme in that year.

Decommissioning

36.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and must include measures to address any significant noise and vibration effects.

(4) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

37. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

38.—(1) All details submitted for the approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article

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(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

39.—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

Ground subsidence

40.—(1) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until a scheme for monitoring ground subsidence in and around the flood defences for the River Aire has been submitted to, and following consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme must set out—

- (a) the details of the work which is to be subject to monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the duration of monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit a ground subsidence mitigation scheme for the Environment Agency’s approval in accordance with sub-paragraph

(3)

(3) If the monitoring identifies that ground subsidence has exceeded the level described in sub-paragraph

(2)(e)

, a scheme setting out mitigation measures in relation to the ground subsidence must be submitted as soon as is reasonably practicable to and, following consultation with the Environment Agency, approved by the relevant planning authority.

(4) The mitigation scheme approved pursuant to sub-paragraph

(3)

must be implemented as approved unless otherwise agreed in writing with the relevant planning authority.

SCHEDULE 3

Article

8

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to street works</i>	<i>Description of the street works</i>
In the District of Selby	A19 / Fox Lane	Widening and improvement works to the junction at A19 / Fox Lane between the points marked W and X on sheet 3 of the access and rights of way plans
In the District of Selby	A19 / North of Burn Lodge Farm	Works for the installation and maintenance of Work No. 6 between the points marked AL and AM on sheet 4 of the access and rights of way plans
In the District of Selby	A19 / South of Burn Lodge Farm	Works for the provision of a new temporary construction access between the points marked AD and AE on sheet 4 of the access and rights of way plans
In the District of Selby	A19 / Tranmore Lane	Works for the installation and maintenance of Work No. 5 between the points marked A and B on sheet 1 of the access and rights of way plans
In the District of Selby	A19 / unnamed private road	Works to resurface the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans
In the District of Selby	Hazel Old Lane	Works to repair, replace or maintain the existing culvert as part of Work No. 9 between the points marked F and G on sheet 1 of the access and rights of way plans
In the District of Selby	Millfield Road	Works for the installation and maintenance of Work No. 6 between the points marked U and V on sheet 3 of the access and rights of way plans

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to street works</i>	<i>Description of the street works</i>
In the District of Selby	Millfield Road	Works for the provision of a new permanent access on the south side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Millfield Road	Works for the provision of a new permanent access on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Fox Lane	Works to temporarily widen and improve the existing street between the points marked W and Z and create a new temporary access at the point marked Y on sheet 3 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the installation and maintenance of Work No. 4 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the installation and maintenance of Work No. 5 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the installation and maintenance of Work No. 6 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the provision of a new temporary construction access between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the improvement of the access at the point marked AJ on sheet 2 of the access and rights of way plans

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of Selby	West Lane	Works for the provision of a new permanent access between the points marked AI and AH on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	Works for the provision of a new temporary construction access between the points marked AI and AG on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	Works for the installation and maintenance of Work No. 6 between the points marked AH and AG on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	Works for the provision of a new permanent access on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans
In the District of Selby	Whittings Lane	Works to resurface the access in the area cross hatched in red at the point marked AC on sheet 4 of the access and rights of way plans

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SCHEDULE 4

Articles
9
and
12

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

Table 2

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to alteration of layout</i>	<i>Description of alteration</i>
In the District of Selby	Millfield Road	Works for the provision of a new permanent access on the south side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Millfield Road	Works for the provision of a new permanent access on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the improvement of the access at the point marked AJ on sheet 2 of the access and rights of way plans
In the District of Selby	West Lane	Works for the provision of a new permanent access between the points marked AI and AH on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	Works for the provision of a new permanent access on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans

PART 2

TEMPORARY ALTERATION OF LAYOUT

Table 3

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to alteration of layout</i>	<i>Description of alteration</i>
In the District of Selby	A19 / South of Burn Lodge Farm	Works for the provision of a new construction access between the points marked AD and AE on sheet 4 of the access and rights of way plans
In the District of Selby	A19 / Fox Lane	Widening and improvement works to the junction at A19 / Fox Lane between the points marked W and X on sheet 3 of the access and rights of way plans
In the District of Selby	Fox Lane	Works to temporarily widen and improve the existing street between the points marked W and Z and to create a new temporary access at the point marked Y on sheet 3 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the provision of a new construction access between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	West Lane	Works for the provision of a new temporary construction access between the points marked AI and AG on sheet 4 of the access and rights of way plans

SCHEDULE 5

Article

10

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE
MAINTAINED AT THE PUBLIC EXPENSE

Table 4

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of Selby	A19 / unnamed private road	That part of the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans
In the District of Selby	Wand Lane	Works for the improvement of the access in the area cross hatched in blue at the point marked AJ on sheet 2 of the access and rights of way plans
In the District of Selby	Millfield Road	That part of the access cross hatched in blue between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	West Lane	That part of the access shown cross hatched in blue marked between the points marked AI and AH on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	That part of the access cross hatched in blue on the east side of West Lane between the points marked AG and AH on sheet 4 of the access and rights of way plans

PART 2

**THOSE PARTS OF THE ACCESS TO BE
MAINTAINED BY THE STREET AUTHORITY**

Table 5

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of Selby	Hazel Old Lane / unnamed private road	That part of the access between the points marked D and E on sheet 1 of the access and rights of way plans
In the District of Selby	Millfield Road	That part of the access cross hatched in red on the south side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Millfield Road	That part of the access cross hatched in red on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Wand Lane	That part of the access shown cross hatched in red at the point marked H on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Land	That part of the access shown cross hatched in red at the point marked AJ on sheet 2 of the access and rights of way plans
In the District of Selby	Unnamed private road (off A19)	That part of the access shown cross hatched in red between the points marked T and S on sheet 3 of the access and rights of way plans
In the District of Selby	West Lane	That part of the access shown cross hatched in red marked between points AI and AH on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	That part of the access cross hatched in red on the east side of West Lane between the points marked AG and AH on sheet 4

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of Selby	Whitings Lane	of the access and rights of way plans That part of the access in the area cross hatched in red at the point marked AC on sheet 4 of the access and rights of way plans

PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of Selby	Wand Lane	That part of the access between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	A19 / South of Burn Lodge Farm	That part of the access cross hatched in blue between points AD and AE on sheet 4 of the access and rights of way plans
In the District of Selby	Fox Lane	That part of the access cross hatched in red between the points marked Y and AA on sheet 3 of the access and rights of way plans
In the District of Selby	Unnamed private road (off A19)	That part cross hatched red between point AF and the start of the blue cross hatching at the points marked AD and AE on sheet 4 of the access and rights of way plans
In the District of Selby	West Lane	That part of the access cross hatched in red between the points marked AI and AG on sheet 4 of the access and rights of way plans

SCHEDULE 6

Article

11

STREETS TO BE TEMPORARILY STOPPED UP

Table 7

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of extent of temporary stopping up</i>
In the District of Selby	A19 / Fox Lane	Temporary closure of the part of the streets between the points marked W and X, and W and Z on sheet 3 of the access and rights of way plans
In the District of Selby	A19 / South of Burn Lodge Farm	Temporary closure of the part of the street between the points marked AD and AE on sheet 4 of the access and rights of way plans
In the District of Selby	A19 / Tranmore Lane	Temporary closure of the part of the street shown between the points marked A and B on sheet 1 of the access and rights of way plans
In the District of Selby	A19 / unnamed private road	Temporary closure of the part of the street in the area cross hatched in blue at point C on sheet 1 of the access and rights of way plans
In the District of Selby	Hazel Old Lane	Temporary closure of the part of the street shown between point F and G on sheet 1 of the access and rights of way plans
In the District of Selby	Millfield Road	Temporary closure of the part of the street for the installation and maintenance of Work No. 6 between the points marked U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Millfield Road	Temporary closure of the part of the street for the provision of a permanent access on the south side of Millfield Road between points U and V on sheet 3 of the access and rights of way plans
In the District of Selby	Millfield Road	Temporary closure of the part of the street for the provision of a

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of extent of temporary stopping up</i>
In the District of Selby	Wand Lane	permanent access on the north side of Millfield Road between the points marked U and V on sheet 3 of the access and rights of way plans Temporary closure of the part of the street for the installation and maintenance of Work No. 4 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Temporary closure of the part of the street for the installation and maintenance of Work No. 5 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	Wand Lane	Temporary closure of the part of the street for the installation and maintenance of Work No. 6 between the points marked I and J on sheet 2 of the access and rights of way plans
In the District of Selby	West Lane	Temporary closure of part of the street between the points marked AI and AG on sheet 4 of the access and right of way plans for the provision of a temporary construction access
In the District of Selby	West Lane	Temporary closure of part of the street between the points marked AI and AG on sheet 4 of the access and right of way plans to facilitate the provision of new permanent accesses
In the District of Selby	West Lane	Temporary closure of the part of the street between the points marked AH and AG on sheet 4 of the access and right of way plans for the installation and maintenance of Work No. 6
In the District of Selby	Whittings Lane	Temporary closure of the part of the street cross hatched in red at the point marked AC on sheet 4

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of extent of temporary stopping up of the access and rights of way plans</i>

SCHEDULE 7

Article

11

PUBLIC RIGHTS OF WAY AND PUBLIC RIGHTS OF NAVIGATION TO BE STOPPED UP OR SUSPENDED

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

Table 8

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Public right of way to be temporarily stopped up</i>	<i>Extent of stopping up</i>
In the District of Selby	Public footpath 35.27/1/1	Between the points marked K and L on sheet 2 of the access and rights of way plans
In the District of Selby	Public footpath 35.21/5/1	Between the points marked Q and R on sheet 3 of the access and rights of way plans
In the District of Selby	Public bridleway 35.14/4/1	Between the points marked AB and AC on sheet 4 of the access and rights of way plans

PART 2

PUBLIC RIGHTS OF NAVIGATION TO BE TEMPORARILY SUSPENDED

Table 9

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Location of public right of navigation to be temporarily suspended</i>	<i>Work No.</i>	<i>Extent of suspension</i>
In the District of Selby	River Aire	Work No. 4	Between the points marked M and N and in the area shaded blue on sheet 2 of the access and rights of way plans
In the District of Selby	River Aire	Work No. 4	Between the points marked O and P and in the area shaded blue on sheet 3 of the access and rights of way plans

SCHEDULE 8

Article
20

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation**1.** In this schedule—

“Work No. 4 infrastructure” means any works or development comprised within Work No. 4 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 4 on the works plans;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 9 infrastructure” means any works or development comprised within Work No. 9 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9 on the works plans;

Table 10

(1)	(2)
<i>Number of plot shown on the land plans</i>	<i>Rights etc. which may be acquired</i>
10	For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
30	For and in connection with the Work No. 9 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, together with the right to install, retain, use and maintain the Work No. 9 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

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<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
90, 125, 135, 165, 170, 175, 190, 195, 215, 250	For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
90, 125, 135, 165, 170, 175, 190, 195, 215, 250	For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

(1)	(2)
<i>Number of plot shown on the land plans</i>	<i>Rights etc. which may be acquired</i>
230	For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to abstract water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing.
240, 245	For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to discharge water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing.
255, 355, 360, 365, 380, 400, 420, 445, 490, 530, 540, 545, 555, 575, 595, 600	For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying,

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<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
	installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
180, 200, 205, 210, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320	For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
500, 510	Right of access for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
515, 525	Right for the undertaker and all persons authorised on its behalf to improve the access and a right to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, and a right to park vehicles, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure along with the right to prevent any works on or uses of the land which may interfere with or obstruct the right to park or access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
695	Right for the undertaker and all persons authorised on its behalf to create a new access or improve an access, to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of Work No. 7 along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to Work No. 7, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

Table 10

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
10	For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter,

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<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
30	<p>pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 9 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 9 infrastructure, together with the right to install, retain, use and maintain the Work No. 9 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9 infrastructure, or interfere with or obstruct access from and to the Work No. 9 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
90, 125, 135, 165, 170, 175, 190, 195, 215, 250	<p>For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on</p>

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
90, 125, 135, 165, 170, 175, 190, 195, 215, 250	<p>or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
230	<p>For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to abstract water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or</p>

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<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
240, 245	moveable structure, tree, shrub, plant or other thing. For and in connection with the Work No. 4 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, boats, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water and a right to discharge water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing.
255, 355, 360, 365, 380, 400, 420, 445, 490, 530, 540, 545, 555, 575, 595, 600	For and in connection with the Work No. 6 infrastructure within a corridor of up to 14m in width the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
180, 200, 205, 210, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320	For and in connection with the Work No. 4 infrastructure within a corridor of up to 14m in width the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
500, 510	the laying, installation, use and maintenance of the Work No 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land. Right of access for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
515, 525	Right for the undertaker and all persons authorised on its behalf to improve the access and a right to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, and a right to park vehicles, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure along with the right to prevent any works on or uses of the land which may interfere with or obstruct the right to park or access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
695	Right for the undertaker and all persons authorised on its behalf to create a new access

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(1)	(2)
<i>Number of plot shown on the land plans</i>	<i>Rights etc. which may be acquired</i>
	or improve an access, to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of Work No. 7 along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to Work No. 7, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

SCHEDULE 9

Article
20

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

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to 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 or the imposition of a restrictive covenant 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(33) has effect subject to the modifications set out in sub-paragraph

(2)

(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 5—

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

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

(33) 1973 c.26

- (2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—
- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
 - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 9 to the Eggborough Gas Fired Generating Station Order 2018) to acquire an interest in the land; and
 - (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act is to have 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, or to the imposition under this Order of a restrictive covenant, 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 the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(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 or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation in case of severance) 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 or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant 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.”.

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) (refusal to convey, failure to make title, etc);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (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 to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the new right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (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 or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act 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 new right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice>

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

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

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

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

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

Determination by Upper Tribunal

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

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

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

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

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

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

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

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

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

SCHEDULE 10

Article
26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 11

<i>(1)</i>	<i>(2)</i>
<i>Number of plot shown on the land plans</i>	<i>Purpose for which temporary possession may be taken</i>
235, 330, 340, 345	Temporary use required to facilitate construction of Work No. 4
370, 375, 425, 430, 495, 505, 535, 550, 580, 585, 590, 620, 625, 630, 635, 655, 660, 685, 690	Temporary use as laydown, construction compound and construction use required to facilitate construction of Work No. 6
385, 390, 410, 415, 435, 440, 640, 645, 650	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No.6
665, 670, 675, 680	Temporary use as laydown, construction compound and construction use required to facilitate construction of Work Nos. 4 and 6
450, 455, 460, 465, 470, 480, 560, 565	Temporary use to facilitate construction access to Work No. 6
615	Temporary use as laydown, construction compound and construction use required to facilitate construction of Work No. 7

SCHEDULE 11

Article
40

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of nine weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph

2
;

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (4), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within twenty-one days of receipt of the application.

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph

(2)

or

(3)

it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012⁽³⁴⁾ (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

- (2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—
- (a) the application being rejected as invalidly made; or
 - (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 1(1)(c) of this Schedule.

Appeals

- 4.—(1) The undertaker may appeal in the event that—
- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
 - (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 1(4);
 - (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
 - (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is to be as follows—
- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
 - (b) The Secretary of State is to appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
 - (c) The relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business

(34) [S.I 2012/2920](#)
as amended by
[S.I 2013/2153](#)
and
[S.I 2014/357](#)
and
[S/I 2014/2026](#)

days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

- (d) The appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph

(c)

above; and

- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph

(d)

- (f) The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required.

- (4) Any further information required pursuant to sub-paragraph

(3)

must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraph

(2)(c)

(2)(e)

- (5) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph

(11)

requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 3 March 2014 from the Ministry of Housing, Communities and Local Government or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 11

5. In this Schedule 11—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971⁽³⁵⁾; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

SCHEDULE 12

Article

33

PROTECTIVE PROVISIONS

PART 1

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

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

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989⁽³⁶⁾), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—

⁽³⁵⁾ 1971 c.80

⁽³⁶⁾ 1989 c.29

- (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽³⁷⁾;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
- (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁸⁾;
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article

11

(temporary stopping up of streets, public rights of way and public rights of navigation), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not—

- (a) where the utility undertaker is NGG or NGET, acquire any land interest or apparatus or override any easement and/or other interest otherwise than by agreement; or

(37) 1991 c.56

(38) 1986 c.44

A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by the Utilities Act 2000 (c.27)

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(b) in the case of any other utility undertaker, acquire any apparatus otherwise than by agreement.

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

(2)

to

(7)

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

(3)

, afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph

(2)

, in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

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

41

(arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article

41

(arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph

(2)

or

(3)

, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph

(5)

, if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph

(6)

authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article

41

(arbitration).

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

8.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph

6(2)

, the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph

(1)

and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph

(3)

by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph

(2)

must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph

(1)

are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph

(3)

and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs

1
to
7
apply as if the removal of the apparatus had been required by the undertaker under paragraph
6(2)

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

(6) The undertaker is not required to comply with sub-paragraph
(1)
in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph
(2)
in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph
6(2)

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

- (3) If in accordance with the provisions of this Part—
- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
 - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article

41
(arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph

(1)
is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); 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.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph

(1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs

(2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

(2) Nothing in sub-paragraph

(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

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

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

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003⁽³⁹⁾;

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act⁽⁴⁰⁾;

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

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

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

13. The exercise of the powers of article

28

(statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

14.—(1) Subject to sub-paragraphs

(2)

to

(4)

, if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

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

(b) there is any interruption in the supply of the service provided by an operator,

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

(2) Nothing in sub-paragraph

(1)

⁽³⁹⁾ 2003 c.21
as amended by the Digital Economy Act
2017 (c. 30)

⁽⁴⁰⁾ Added by Schedule 1 of the Digital Economy Act
2017 (c.30)

imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

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

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

41
(arbitration).

15. This part of this Schedule does not apply to—

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

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

PART 3

FOR THE PROTECTION OF CANAL AND RIVER TRUST

Interpretation

17.—(1) For the protection of CRT the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CRT.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2018) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;

- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT's network);
- (g) any interference with the exercise by any person of rights over CRT's network;

"the engineer" means an engineer appointed by CRT for the purpose in question;

"plans" includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph

[21\(3\)\(a\)](#)

;

"specified work" means so much of Work No 4 as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

"the waterway" means the Aire & Calder Navigation, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that navigation.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

Powers requiring CRT's consent

18.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article

[14](#)

(discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT, save as to surface water discharge which will not require the consent of CRT.

(3) The undertaker must not exercise the powers conferred by article

[15](#)

(authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of CRT.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily stop up streets or public rights of way under article

[11](#)

(temporary stopping up of streets, public rights of way and public rights of navigation), as applied by Schedule 6 (streets to be temporarily stopped up), Part 1 of Schedule 7 (public rights of way to be temporarily stopped up) and Part 2 of Schedule 7 (public rights of navigation to be temporarily suspended) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of CRT.

(5) The undertaker must not exercise the powers conferred by this Order to abstract water from the waterway if either—

- (a) that abstraction substantially deviates (which for the purpose of this paragraph ¹⁸ means a deviation in angle greater than 20°) as compared to the angle of abstraction at 30 May 2017; or
- (b) the rate of abstraction increases beyond the licensed levels for the existing coal-fired power station as at 30 May 2017

unless such abstraction is with the consent of CRT.

(6) The consent of CRT pursuant to sub-paragraphs

(1)

to

(4)

must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article

¹⁴

(discharge of water) may include conditions—

- (a) specifying the maximum volume water which may be discharged in any period; and
- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT, to the extent that any discharge of water by the undertaker is into the waterway.

(7) The consent of CRT pursuant to sub-paragraph

(5)

must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions including specifying the maximum velocity of the flow of water which may be abstracted at right angles to the waterway at any time.

Fencing

19. Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

20.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by CRT and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both CRT and the undertaker at no cost to CRT.

Approval of plans, protective works etc.

21.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to CRT proper and sufficient plans of that work, on CRT forms, and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph

(1)

must not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph

(1)

) have been received by CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by CRT or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by CRT at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker must pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph

(3)

above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to CRT under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this subparagraph must state the works that are to be completed by the undertaker and lay out a

reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, CRT may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

22.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(41) and to the interest of CRT in preserving and enhancing the environment of its waterways.

Notice of works

23. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

Lighting

24. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

25.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 21 and paragraph 22 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT; and

(41) 1995 c.i

- (e) in such a manner so as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article [14](#) (discharge of water).

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968⁽⁴²⁾ to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and CRT.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph

[\(3\)](#), CRT and the undertaker must take account of any survey issued pursuant to paragraph [20](#)

and any other information agreed between them pursuant to this Part 3.

Prevention of pollution

26. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

27.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) CRT on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse CRT's reasonable costs in relation to the supply of such information.

Alterations to the waterway

28.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to CRT the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to

(42) 1968 c.73

be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to CRT under this paragraph.

Maintenance of works

29. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of CRT's fees, etc.

30.—(1) The undertaker must repay to CRT in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 21(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by CRT to ensure the safe navigation of the waterway save that nothing is to require CRT to construct and/or carry out any measures.

(2) If CRT considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph

(1), CRT will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

- (a) provide confirmation to CRT that the estimate is agreed and pay to CRT, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to CRT that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) CRT must take in to account any representations made by the undertaker in accordance with this paragraph

and must, within twenty-one days of receipt of the information pursuant to sub-paragraph

(1)

, confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) CRT must, when estimating and incurring any charge, cost or expense pursuant this paragraph

30

, do so with a view to being reasonably economic and acting as if CRT were itself to fund the relevant fee, charge, cost or expense.

Costs of alterations, etc.

31. Any additional expenses which CRT may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work must, provided that 56 days' notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to CRT.

Making good of detriment; compensation and indemnity, etc.

32.—(1) If any detriment is be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) must make good such detriment and must pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by CRT—

(a) by reason of the construction of a specified work or a protective work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph

(4)

the undertaker must effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs

(a)

and

(b)

(provided that CRT is not entitled to recover any consequential losses which are not reasonably foreseeable from the undertaker).

(3) The fact that any act or thing may have been done by CRT on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph

(2)

imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of CRT, its officers, servants, contractors or agents.

(5) CRT must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

Arbitration

33. Any difference arising between the undertaker and CRT under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article

[41](#)
(arbitration) of this Order.

Capitalised sums

34. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

SCHEDULE 13

Article
[34](#)

DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009

PART 1

INTRODUCTION

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised development” means the development described in Part 1 of Schedule 1 and any other development authorised by the Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development;

“the English inshore region” has the same meaning as that given in section 322 (interpretation) of the 2009 Act;

“licence holder” means the undertaker and any agent, contractor or sub-contractor acting on its behalf;

“licensable marine activities” means any activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity described in Part 2 of this licence;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such activities have been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“mean high water spring tide” means the highest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“river” means for the purposes of this Schedule 13 the areas of Work No. 4 which are below mean high water spring tide within the River Aire;

“Order” means The Eggborough Gas Fired Generating Station Order 2018;

“Order land” means the land delineated and marked as such on the land plans;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“undertaker” means Eggborough Power Limited (registered company number 03782700);

“Work No. 4” means cooling water connection works, comprising works to the existing cooling water supply and discharge pipelines and intake and outfall structures, including, as necessary, new, upgraded or replacement pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables,

Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH, telephone 0300 123 1032 and where contact to the local MMO office is required, the following contact details should be used: Marine Management Organisation, Room 13, Crosskill House, Mill Lane, Beverley, HU17 9JB, telephone 0208 026 0519.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consent@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

PART 2

LICENSED ACTIVITIES

3.—(1) Subject to the licence conditions in Part 3 of this licence, this licence authorises the licence holder to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised project; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) Such activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 4 — works including the installation and removal of a cofferdam and works to the existing cooling water discharge structure, including, as necessary, upgraded or replacement pipelines and structures.

(3) The activity set out in sub-paragraph

(2)(a)

is authorised in relation to the construction, maintenance and operation of those elements of Work No. 4 of Schedule 1 (authorised development) of this Order as defined in paragraph

1

of this schedule, and any further associated development listed in items (a) to (m) in Schedule 1 in connection with Work No. 4, which fall within the English inshore region.

(4) The undertaker (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in—

- (a) the area bounded by the coordinates set out in Table 12 in this paragraph; and
- (b) if there is a change in mean high water springs during the construction, maintenance and operation of the licensed activities, the area bounded by the coordinates set out in Table 13 in this paragraph to the extent that they fall below mean high water spring tide at the time the licensed activities are carried out.

(5) The coordinates in Table 12 and Table 13 are defined in accordance with reference system WGS84 –World Geodetic System 1984.

Table 12

<i>Work No.</i>	<i>Easting</i>	<i>Northing</i>
4	624397.000	5953948.000
	624393.000	5953940.000
	624387.000	5953937.000
	624378.000	5953936.000
	624368.000	5953936.000
	624363.000	5953938.000
	624355.000	5953938.000
	624347.000	5953943.000
	624345.000	5953943.000
	624342.000	5953946.000
	624335.000	5953951.000
	624326.000	5953957.000
	624318.000	5953963.000
	624327.000	5953980.000

Table 13

<i>Work No.</i>	<i>Easting</i>	<i>Northing</i>
4	624397.000	5953948.000
	624384.000	5953924.000
	624312.000	5953951.000
	624326.000	5953979.000

PART 3

CONDITIONS

General

4. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must

notify the MMO at the earliest opportunity and failure to do so may render this licence invalid and may lead to enforcement action.

5. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours of being identified in accordance with the following—

- (a) within office hours: 0300 200 2024;
- (b) outside office hours: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk

6.—(1) Where the licensed activities are to be carried out in the area bounded by the coordinates in Table 13 and any part of that area is below mean high water springs, the licence holder must submit to the MMO for approval an assessment not less than 10 weeks prior to commencing the licensed activities.

(2) The assessment submitted pursuant to sub-paragraph

(1)

must contain as a minimum clear designs for works together with an assessment of the bank stability, the impacts of the proposed works on the hydromorphology of the river and how the proposed solution will be resilient to any future bank erosion.

Pre-Construction

7.—(1) The licence holder must submit a method statement to the MMO at least 6 weeks prior to the proposed commencement of the licensed activities.

(2) The licensed activities must not commence until written approval is provided by the MMO.

8. The licence holder must inform the MMO in writing of the intended start date and the likely duration of licensed activities on a site at least ten working days prior to the commencement of the first licensed activity on that site.

9. A notice to mariners must be issued prior to activities commencing and a copy sent to the MMO within five working days of issue.

10.—(1) The licence holder must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on the licensed activity on behalf of the licence holder.

11.—(1) The licence holder must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the licence holder. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

(2) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments has been read and understood by the masters of any vessel being used to carry on any licensed activity listed in this licence, and that a copy of this licence is held on board any such vessel.

During Construction, Operation and Maintenance

12. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with Environment Agency Pollution Prevention Control Guidelines.

13. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

14. The licence holder must not discharge waste concrete slurry or wash water from concrete or cement into the river. The licence holder must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river.

15.—(1) Vibro piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth. If percussive piling is necessary soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than twenty minutes.

(3) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

16. If concrete is to be sprayed suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the water environment. Rebounded material must be cleared away before the sheeting is removed.

17. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

Post Construction

18. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within six weeks of completion of the licensed activity.

19. The licence holder must ensure that the MMO local Marine Office is notified of the completion of works and operations within ten days following the completion of the works.

SCHEDULE 14

Requirement

5

DESIGN PARAMETERS

PART 1

SINGLE SHAFT PARAMETERS

1. The maximum parameters for the buildings and structures for the single shaft layout are set out at table 14.

2. The maximum parameters and grid reference location of the combined cycle gas turbine stacks are set out in table 15.

3. The finished ground level in respect of Work No. 1 is between 7.9 metres AOD and 9.9 metres AOD.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Table 14

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Component</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m)</i>	<i>Maximum diameter (m)</i>
Gas turbine hall building	76	76	30	
Heat recovery steam generator	63	28	50	
Electrical building near heat recovery steam generator	30	27	10	
Combine cycle gas turbine air intake filters (each)	24	16	30	
Electrical building near air intake filter	39	16	10	
Generator transformer	30	24	15	
Feed water pump building	64	23	20	
Demineralised water treatment plant, fire pumps and laboratory	57	33	20	
Demineralised water storage tank			20	25
Gas reception facility	65	52	5	
Gas compressors	50	20	10	
Auxiliary boiler	30	15	20	
Auxiliary boiler stacks (each)			25	1.5
Combined cycle gas turbine standby diesel generators	19	9	8	
Continuous emissions monitoring system container	10	3	3	

(1)	(2)	(3)	(4)	(5)
Component	Maximum length (m)	Maximum width (m)	Maximum height (m)	Maximum diameter (m)
Cooling towers (each)	240	27	25	
Cooling water electrical module	15	6	10	
Cooling water pumps	30	15	8	
Cooling water sampling and dosing plant	19	11	8	
Peaking plant building	103	65	30	
Peaking plant stack(s) (each) (open cycle gas turbine)			45	8
Peaking plant stack(s) (each) (gas engine)			28	1.3
Black start facility	55	43	30	
Black start facility stack(s) (each) (open cycle gas turbine)			45	2.5
Black start facility stack(s) (each) (gas engine)			25	1.3
Diesel tank for black start diesel generator			12	4
Electrical control room and administration building	85	24	20	
Electrical substation	40	17	15	
Workshop and stores	51	20	12	
Raw and fire water tank			20	25
Gas bottle stores (each)	17	5	3	

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Component</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m)</i>	<i>Maximum diameter (m)</i>
Closed-circuit cooling water coolers	15	10	10	
Waste water treatment plant	55	28	20	
Firewater and stormwater retention basins	110	50	0	
Gatehouse	12	12	5	

Table 15

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Component</i>	<i>Grid reference of centre point of each stack (using reference system OSGB36 - Ordnance Survey Great Britain 1936)</i>	<i>Maximum diameter of each stack (m)</i>	<i>Top of each stack in mAOD</i>
Combined cycle gas turbine stack	First stack— 457600 423933 Second Stack— 457593 423944 Third Stack— 457587 423933	9.6	99.9

PART 2

MULTI-SHAFT PARAMETERS

4. The maximum parameters for the buildings and structures for the multi shaft layout are set out at table 16.

5. The maximum parameters and grid reference location of the combined cycle gas turbine stacks are set out in table 17.

6. The finished ground level in respect of Work No. 1 is between 7.9 metres AOD and 9.9 metres AOD.

Table 16

(1)	(2)	(3)	(4)	(5)
<i>Component</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m)</i>	<i>Maximum diameter (m)</i>
Gas turbine hall building	76	76	30	
Steam turbine hall building	64	54	30	
Heat recovery steam generator	63	28	50	
Electrical building near heat recovery steam generator	30	27	10	
Combine cycle gas turbine air intake filters (each)	24	16	30	
Electrical building near air intake filter	24	16	10	
Generator transformer	21	20	15	
Feed water pump building	54	26	20	
Demineralised water treatment plant, fire pumps and laboratory	57	33	20	
Demineralised water storage tank			20	25
Gas reception facility	65	52	5	
Gas compressors	50	20	10	
Auxiliary boiler	30	15	20	
Auxiliary boiler stacks (each)			25	1.5
Combined cycle gas turbine	19	9	8	

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(1)	(2)	(3)	(4)	(5)
Component	Maximum length (m)	Maximum width (m)	Maximum height (m)	Maximum diameter (m)
standby diesel generators				
Continuous emissions monitoring system container	10	3	3	
Cooling towers (each)	240	27	30	
Cooling water electrical module	15	6	10	
Cooling water pumps	30	15	8	
Cooling water sampling and dosing plant	19	11	8	
Peaking plant building	103	65	30	
Peaking plant stack(s) (each) (open cycle gas turbine)			45	8
Peaking plant stack(s) (each) (gas engine)			28	1.3
Black start facility	55	43	30	
Black start facility stack(s) (each) (open cycle gas turbine)			45	2.5
Black start facility stack(s) (each) (gas engine)			25	1.3
Diesel tank for black start diesel generator			12	4
Electrical control room and administration building	85	24	20	
Electrical substation	35	15	15	

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(1)	(2)	(3)	(4)	(5)
<i>Component</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m)</i>	<i>Maximum diameter (m)</i>
Workshop and stores	51	20	12	
Raw and fire water tank			20	25
Gas bottle stores (each)	17	5	3	
Closed-circuit cooling water coolers	15	10	10	
Waste water treatment plant	55	28	20	
Firewater and stormwater retention basins	110	50	0	
Gatehouse	12	12	5	

Table 17

(1)	(2)	(3)	(4)
<i>Component</i>	<i>Grid reference of centre point of each stack (using reference system OSGB36 - Ordnance Survey Great Britain 1936)</i>	<i>Maximum diameter of each stack (m)</i>	<i>Top of each stack in mAOD</i>
Combined cycle gas turbine stack	First stack— 457600 423933 Second Stack— 457593 423944 Third Stack— 457587 423933	9.6	99.9

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Eggborough Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station of up to 2500MW. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

This Order also grants a deemed marine licence under Part 4 of the Marine and Coastal Access Act 2009.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article

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of this Order (certification of plans, etc.) may be inspected free of charge during working hours at the offices of North Yorkshire County Council, County Hall, Northallerton, North Yorkshire, DL7 98AD.