

ELIZABETH II



1977 CHAPTER xxiii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Atholl Investments (Aberdeen Development).

[15th December 1977]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said 1936 c. 52. Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed.

Confirmation
of Order in
schedule.

2. This Act may be cited as the Atholl Investments (Aberdeen Development) Order Confirmation Act 1977.

SCHEDULE

ATHOLL INVESTMENTS (ABERDEEN DEVELOPMENT)

Provisional Order to authorise Atholl Investments (Scotland) Limited to construct buildings or structures bridging over The Green, Denburn Road, College Street and Windmill Brae in the district of the City of Aberdeen; and for other purposes.

Whereas Atholl Investments (Scotland) Limited (hereinafter referred to as "the Company") is a company incorporated under the Companies Acts 1948 to 1967 and carries on business in the United Kingdom as a property development and investment company and activities related thereto:

And whereas the British Railways Board have agreed to afford to the Company an appropriate interest in certain of the lands in which are situate the railways and the principal railway station in the district of the City of Aberdeen (hereinafter called "the district") so as to enable the Company to construct buildings and structures bridging over the said railways and on the other of the said lands:

And whereas it is expedient for the utilisation to the best advantage of the development site so rendered available to the Company that that development should incorporate buildings or structures bridging over the highways adjacent to the said development site and known as The Green, Denburn Road, College Street and Windmill Brae in the district:

And whereas it is accordingly expedient that the Company should be authorised to construct such buildings or structures as in this Order provided and that the other provisions of this Order should be enacted:

And whereas a plan and sections showing the line and levels of the works authorised by this Order, such plan showing also the lands which may be used under the powers of this Order and for the purposes of this Order, together with a book of reference to the said plan containing the names of the owners or reputed owners, lessees or reputed lessees and of the occupiers of all such lands and describing the same, have been deposited with the sheriff clerk of the Sheriffdom of Grampian, Highland and Islands at Aberdeen and such plan, sections and book of reference are respectively referred to in this Order as the deposited plan, sections and book of reference:

And whereas the purposes of this Order cannot be effected without an order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the last-mentioned Act the Secretary of State orders as follows:—

1. This Order may be cited as the Atholl Investments (Aberdeen Short title. Development) Order 1977.

2.—(1) In this Order, unless the subject or context otherwise Interpretation. requires—

“ the works ” means the works (or either of them) described in section 3 (Power to make works) of this Order and includes the same as renewed or altered under subsection (2) of the said section 3 and any works constructed under section 4 (Subsidiary works) of this Order;

“ the Company ” means Atholl Investments (Scotland) Limited;

“ the district ” means the district of the City of Aberdeen;

“ the district council ” means the City of Aberdeen District Council;

“ The Green ”, “ Denburn Road ”, “ College Street ” and “ Windmill Brae ” mean respectively the highways of those names in the district;

“ the regional council ” means the Grampian Regional Council;

“ telegraphic line ” has the same meaning as in the Telegraph Act 1878.

1878 c. 76.

(2) Any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by or by virtue of any subsequent enactment including this Order.

3.—(1) Notwithstanding anything in any other enactment or rule of law, or any interest or other right of the public or the inhabitants at large in, on or over The Green, Denburn Road, College Street or Windmill Brae, but subject to the provisions of this Order, the Company, when pursuant to section 8 (Acquisition of rights in or over certain highways) of this Order it has acquired such rights and interests as may exist—

(a) in the case of Work No. 1, in, and in the air space above The Green and Denburn Road;

(b) in the case of Work No. 2, in, and in the air space above College Street and Windmill Brae;

may make in the lines and situations and upon the lands delineated on the deposited plan and described in the deposited book of reference and according to the levels shown on the deposited sections the works hereinafter described, that is to say:—

Work No. 1 A building or structure above the level of The Green and Denburn Road and supported by foundations and columns, commencing at a point in the centre of the carriageway of The Green adjacent to the west side of the existing building or structure which lies above the level of that carriageway and forms part of the premises known as 143/149 Union Street in the district thence proceeding first in a

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west-south-westerly direction and thereafter curving about the junction of The Green and Denburn Road in a north-westerly direction and terminating at a point in the centre of the carriageway of Denburn Road 37 metres or thereby measured in a west-north-westerly direction from the point of commencement.

Work No. 2 A building or structure comprising a pedestrian bridgeway above the level of College Street and Windmill Brae and supported by foundations and columns, commencing at a point on the east side of College Street at or about its junction with Windmill Brae and terminating at a point in the centre of the carriageway of Windmill Brae 23 metres or thereby in a west-south-westerly direction from the point of commencement:

Provided that nothing in this subsection shall authorise the Company to construct—

- (a) any such column so that any part thereof lies in the carriageway forming part of any public street;
- (b) any such foundation so that any part thereof is at a depth of less than 1.5 metres below the surface of the carriageway.

(2) Subject to the provisions of this Order, the Company may from time to time within the limits of deviation maintain and renew the works or any part thereof and may make minor alterations and additions thereto.

Subsidiary
works.

4.—(1) Subject to the provisions of this Order, the Company for the purposes of or in connection with the works may—

- (a) construct, execute, place and keep all such minor subsidiary works and conveniences as they may find necessary or expedient for or in connection with the construction, maintenance or renewal of the works or the making of minor alterations thereto;
- (b) temporarily or permanently alter, open up or otherwise interfere with The Green, Denburn Road, College Street or Windmill Brae or use, strengthen, widen, divert, improve, alter or otherwise interfere with drains, sewers, telegraphic, telephonic, electric, gas, water and other pipes, lines, wires, works and apparatus (all of which are hereinafter in this section referred to as "apparatus") in The Green, Denburn Road, College Street or Windmill Brae providing where possible a proper substitute before interrupting the passage of sewage, electricity, gas or water in or through any apparatus:

Provided that nothing in this section shall authorise the Company to interfere with the surface of The Green, Denburn Road, College Street or Windmill Brae otherwise than for or in connection with the construction, maintenance or renewal of the supporting foundations and columns comprised in the works.

(2) In the exercise of the powers conferred by paragraph (b) of subsection (1) of this section the Company shall cause as little detriment and inconvenience as the circumstances permit and shall make reasonable compensation for any damage caused to any person by the exercise of such powers.

(3) (a) Not less than forty-two days before executing any works under paragraph (b) of subsection (1) of this section affecting any apparatus the Company shall submit to the appropriate authority sufficient plans, sections and particulars of the proposed works for their approval, which shall not be unreasonably withheld.

(b) The Company shall execute such works in accordance with such plans, sections and particulars as may be submitted to and approved by the appropriate authority or, if such approval be refused, as may be settled by arbitration and all such works shall be executed to the reasonable satisfaction of the appropriate authority, and the Company shall at all times afford to the representative of the appropriate authority access for the purpose of inspecting such works.

(c) If any difference shall arise between the Company and the appropriate authority with respect to any of the matters referred to in this subsection or, in subsection (2) of this section, as to the fact of damage or compensation therefor, such difference shall be referred to and determined by an arbiter to be agreed on, or failing agreement to be appointed by the President of the Institution of Civil Engineers on the application of either the Company or the appropriate authority; provided always that the award or decision of such arbiter shall not relieve the Company of their liability to make compensation to the appropriate authority for loss or damage and to relieve them from claims as provided in subsection (2) of this section.

(d) In this subsection in relation to any apparatus "the appropriate authority" means the authority to whom such apparatus belongs or by whom it is repairable.

(4) Notwithstanding anything in this section the Company shall not—

(i) use any telegraphic line belonging to or used by the Post Office; or

(ii) alter any such line except in accordance with and subject to the provisions of paragraphs (1) to (8) of section 7 of the Telegraph Act 1878.

1878 c. 76.

(5) In this section "alter" in respect of a telegraphic line has the same meaning as in the Telegraph Act 1878.

5. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan and to any extent not exceeding the limits of deviation shown on that plan and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 5 metres upwards or downwards: Power to deviate.

Provided that no part of the works (other than the supporting foundations and columns comprised in the work) shall be constructed at a height above the surface of the carriageways of The Green, Denburn Road, College Street or Windmill Brae less than 5.1 metres or such greater height as the regional council may reasonably require.

Correction of errors in deposited plan and book of reference.

6.—(1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Company after giving not less than ten days' notice to the owner, lessee and occupier of the land in question, may apply to the sheriff for the correction thereof.

(2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake, he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

1973 c. 65.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, with the sheriff clerk and with the proper officers respectively (within the meaning of section 235 (3) of the Local Government (Scotland) Act 1973) of the district council and of the regional council and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Company to take the land or a servitude therein (as the case may be) and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

(5) In this section "the sheriff" means the sheriff principal of and the sheriffs appointed for the Sheriffdom of Grampian, Highland and Islands and "the sheriff clerk" means the sheriff clerk of the Sheriff Court District of Aberdeen.

Temporary stoppage of highways.

7.—(1) The Company during and for the purposes of the construction, maintenance, renewal, enlargement or alteration of the works pursuant to section 3 (Power to make works) of this Order may temporarily stop up, divert or otherwise interfere with any highway and may for any reasonable time divert the traffic therefrom and prevent all persons from passing along and using the same.

(2) The Company shall not exercise the powers of this section—

(a) without the consent of the highway authority and (as respects any adverse effect on the use of The Green as a street market) the district council, but any such consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be determined by the Secretary of State;

(b) so as to deprive foot-passengers bona fide going to or from any building or land abutting on a highway of reasonable access to the building or land.

(3) The exercise of the powers conferred by this section in relation to a highway shall not affect the powers of the Post Office under the

Telegraph Acts 1863 to 1916 to place, maintain, inspect, repair, renew or remove telegraphic lines or to open or break up that highway for any of those purposes.

8. Notwithstanding anything in any other enactment or rule of law, the Company and the relevant authority may enter into and carry into effect agreements for the acquisition by the Company from that authority of such rights and interests as the relevant authority may have in, and in the air space above, The Green, Denburn Road, College Street and Windmill Brae, being rights and interests appearing requisite for the construction, maintenance, renewal or alteration of the works and for the purposes of this Order and of any such agreement as aforesaid those rights and interests shall, as from the passing of the Act confirming this Order, or the date of such agreement, whichever shall be the later, be deemed to be free from any beneficial interest or other right of the public or the inhabitants at large.

Acquisition
of rights in or
over certain
highways.

In this section "the relevant authority" means the regional council, the district council or other body having the functions of trustees for administration of public rights in, and in the air space above The Green, Denburn Road, College Street and Windmill Brae.

9. At any time after the works have been completed the Company may from time to time transfer their interest in the same and their rights under this Order to another person; and the transferee shall have and may exercise to the extent authorised by his conveyance or lease (as the case may be) all or any of the powers conferred upon the Company by this Order in relation to the works but shall be subject to all the restrictions, liabilities and obligations in respect of the works to which the Company are subject and shall perform all the duties of the Company under this Order in respect of the same.

Power to
transfer works.

10. For the protection of the undertakers the provisions of this section shall, unless otherwise agreed in writing between the Company and the undertakers, apply and have effect—

For protection
of statutory
undertakers.

(1) In this section—

"apparatus" means—

(a) in the case of gas undertakers, any gas mains or other pipes or apparatus belonging to the undertakers; or

(b) in the case of the Grampian Regional Council, any sewers, water or other pipes or apparatus belonging to that council;

and includes any building, structure or works constructed for the lodging therein of apparatus;

"in" in a context relating to apparatus includes under, over, across, along or upon;

"plans" means plans, sections, elevations, working drawings and specifications;

"position" includes depth;

"specified work" means such part of any of the works as in its execution and maintenance will or may interfere with or affect any apparatus;

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“ the undertakers ” means both or either of the following:—

the British Gas Corporation;

the Grampian Regional Council, in respect only of their functions as regards sewerage and as water authority.

References to the acts or defaults of the Company include the acts or defaults of their workmen or servants or of their contractors or agents or the workmen or servants of such contractors or agents:

- (2) The powers conferred on the Company by paragraph (b) of subsection (1) of section 4 (Subsidiary works) of this Order shall not be exercised in respect of any apparatus otherwise than in accordance with the provisions of this section:
- (3) At least forty-two days before commencing the execution of any specified work the Company shall give the undertakers notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and also showing the means to be employed by the Company not only for protecting the apparatus during the execution of such specified work and for securing a continuous supply of gas or water or the passage of sewage (as the case may be) but also for making good any damage to or interference with the apparatus resulting from the execution of such specified work; and, if it should appear to the undertakers that such specified work will interfere with, damage or endanger their apparatus or materially impede the supply of gas or water, or the passage of sewage the undertakers may within thirty-five days of the receipt of such notice require the Company to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be required by the undertakers in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

Provided that if the undertakers do not requisition the Company as aforesaid the Company may proceed with the execution of such specified work in accordance with the notice given by them and the accompanying plans:

- (4) Where a requisition has been given by the undertakers under the last foregoing paragraph the works or measures agreed upon or determined as aforesaid shall be executed by and at the expense of the Company but to the satisfaction of and under the superintendence of the undertakers (if after notice given to them by the Company of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the undertakers by or through such superintendence shall be paid by the Company:

Provided that the undertakers may intimate by notice in writing to the Company within fourteen days after the receipt by the undertakers of notice of the intended commencement

of the specified work their intention themselves to do and execute such works or measures and shall, following such intimation, do and execute those works with all reasonable despatch; and the Company shall on the completion thereof pay to the undertakers the reasonable expenses incurred by them in the execution of such works or measures as may be agreed on or determined as aforesaid:

- (5) If the position of any of the apparatus is altered by the Company or the undertakers or if other apparatus is substituted therefor as provided for in paragraphs (3) and (4) of this section the undertakers may within twenty-one days of the receipt by them of the notice referred to in the said paragraph (3) require the Company to or may within the said period notify the Company of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so altered or removed and in that event the undertakers shall pay to the Company or shall themselves bear the additional cost attributable to the substitution of such larger apparatus:
- (6) The Company shall indemnify the undertakers against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the undertakers by reason or in consequence of any damage done by the Company to any apparatus or of any interruption in the supply by the undertakers of gas or water or of the passage of sewage (as the case may be) which may without the written authority of the undertakers be in any way occasioned either by reason of the execution by the Company of the works or by the acts or defaults (in, or in connection with such execution) of the Company:
- (7) The undertakers shall if so requested by the Company furnish to the Company all available information relative to the position and nature of any apparatus which in the opinion of the chief engineer of the undertakers might be affected by any of the works:
- (8) Any difference between the Company and the undertakers in connection with any of the provisions of this section or with anything contained in this Order shall, failing agreement, be determined by an arbiter to be mutually agreed upon between them or, failing agreement, to be appointed by the sheriff principal of the Sheriffdom of Grampian, Highland and Islands on the application of either party.

11. For the protection of the North of Scotland Hydro-Electric Board the provisions of this section shall, unless otherwise agreed in writing between the Company and the Board, apply and have effect—

For protection of North of Scotland Hydro-Electric Board.

- (1) In this section unless the context otherwise requires—

“ apparatus ” means electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to the Board; and includes any building, structure or works constructed for the lodging therein of apparatus; 1882 c. 56.

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“the Board” means the North of Scotland Hydro-Electric Board;

“in” in a context relating to apparatus includes under, over, across, along or upon;

“plans” means plans, sections, elevations, working drawings and specifications;

“position” includes depth;

“specified work” means such part of any of the works as in its execution and maintenance will or may interfere with or affect any apparatus;

References to the acts or defaults of the Company include the acts or defaults of their workmen or servants or of their contractors or agents or the workmen or servants of such contractors or agents:

(2) The provisions of subsection (3) of section 4 (Subsidiary works) of this Order shall not apply to the apparatus of the Board:

(3) At least forty-two days before commencing the execution of any specified work the Company shall give the Board notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and also showing the means to be employed by the Company for protecting the apparatus during the execution of such specified work and for securing a continuous supply of electricity and also for making good any damage to or interference with the apparatus resulting from the execution of such specified work; and, if it should appear to the Board that such specified work will interfere with, damage or endanger their apparatus or materially impede the supply of electricity the Board may within thirty-five days of the receipt of such notice require the Company to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be required by the Board in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

Provided that if the Board do not requisition the Company as aforesaid the Company may proceed with the execution of such specified work in accordance with the notice given by them and the accompanying plans:

(4) Any specified work and any further works or measures agreed upon or determined as aforesaid shall be executed by and at the expense of the Company but to the satisfaction of and under the superintendence of the Board (if after notice given to them by the Company of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the Board by or through such superintendence shall be paid by the Company:

Provided that the Board may intimate by notice in writing to the Company within fourteen days after the receipt by the Board of notice of the intended commencement of the specified work their intention themselves to do and execute such works or measures and shall, following such intimation,

do and execute the same with all reasonable despatch; and the Company shall on the completion thereof pay to the Board the reasonable expenses incurred by them in the execution of such works or measures as may be agreed on or determined as aforesaid:

- (5) If the position of any of the apparatus is intended to be altered by the Company or the Board or if other apparatus is to be substituted therefor as provided for in paragraphs (3) and (4) of this section the Board may within twenty-one days of the receipt by them of the notice referred to in the said paragraph (3) require the Company to or may within the said period notify the Company of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so intended to be altered or removed and in that event the Board shall pay to the Company or shall themselves bear the additional cost attributable to the substitution of such larger apparatus:
- (6) The Company shall indemnify the Board against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the Board by reason or in consequence of any damage done by the Company to any apparatus or of any interruption in the supply by the Board of electricity which may without the written authority of the Board be in any way occasioned either by reason of the execution by the Company of the works or by the acts or defaults (in, or in connection with such execution) of the Company:
- (7) Notwithstanding the temporary stopping up of any highway under the powers of section 7 (Temporary stoppage of highways) of this Order the Board may exercise the same rights of access to any apparatus as they enjoyed immediately prior to the enactment hereof:
Provided that in exercising the said rights of access the Board shall not interrupt the execution, maintenance or use of any of the Company's works and the Board shall compensate the Company for any damage to such works occasioned by the exercise of the said rights:
- (8) The Board shall if so requested by the Company furnish to the Company all available information relative to the position and nature of any apparatus which in the opinion of the chief engineer of the Board might be affected by any of the works:
- (9) If any difference shall arise between the Company and the Board with respect to any of the matters referred to in this section or, in subsection (2) of section 4 (Subsidiary works) of this Order, as to the fact of damage or compensation therefor, such difference shall be referred to and determined by an arbiter to be agreed on, or failing agreement to be appointed by the President of the Institution of Civil Engineers on the application of either the Company or the Board; provided always that the award or decision of such arbiter shall not relieve the Company of their liability to make

compensation to the Board for loss or damage and to relieve them from claims as provided in subsection (2) of section 4.

General saving
for local
authorities, etc.

12. Nothing in this Order shall prejudice, take away, diminish, alter or abridge—

(1) any statutory or other rights, powers, privileges, jurisdictions or authorities acquired by, vested in or enjoyed by the regional council or the district council; or

(2) without prejudice to the foregoing generality, any rights, powers, privileges or jurisdictions vested in or enjoyed by the district council under the Building (Scotland) Acts 1959 and 1970 and any regulations made thereunder;

and all such rights, powers, privileges, jurisdictions and authorities shall continue to be held, exercised and enjoyed as if the Act confirming this Order had not been passed:

Provided that this section shall not apply to the powers and jurisdictions of the regional council or the district council vested in and enjoyed by them under section 59 of the Aberdeen Corporation (Streets, buildings, sewers &c.) Order 1936 in so far as those powers and jurisdictions would, apart from this proviso, have been exercisable in relation to the construction, maintenance and renewal of the works.

Saving for
Town and
Country
Planning Acts.
1972 c. 52.

13.—(1) Section 274 of the Town and Country Planning (Scotland) Act 1972 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of Parliament held during the regnal years 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Order as if it had been passed during that session; and accordingly the Town and Country Planning (Scotland) Act 1972 and orders, regulations, rules, schemes and directions, made or given thereunder shall apply to development authorised by this Order:

Provided that nothing in article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1975 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall apply with respect to development authorised by this Order.

(2) In this section the reference to article 3 of and Class X in Schedule 1 to the Town and Country Planning (General Development) (Scotland) Order 1975 includes a reference to corresponding provisions of any general order superseding that Order made under section 21 of the Town and Country Planning (Scotland) Act 1972 or any corresponding provision of an Act repealing that section.

Costs of
Order.

14. The costs, charges and expenses of and incidental to the preparing for, obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Company.

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CHAPTER xxiii

ARRANGEMENT OF SECTIONS

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