
STATUTORY INSTRUMENTS

2006 No. 3118

The Luton Dunstable Translink Order 2006

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

4.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (7), the Council may from time to time carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) stopping places and such other gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas as may be necessary or convenient;
- (b) works required for or in connection with, the control of vehicular or pedestrian traffic on or in the vicinity of the authorised busway;
- (c) works for the alteration or demolition of any building or structure;
- (d) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (g) works to erect and construct such houses, warehouses, offices, and other buildings, yards, stations, engines, machinery, apparatus, and other works, and conveniences as the Council thinks fit;
- (h) junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of the works described in this paragraph, and works to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over another highway or access way;
- (i) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and such other works as the Council thinks fit; and
- (j) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (7), the Council may from time to time carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) Where the Council lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised works or associated traffic control, the Council may provide in, or in connection with, such conduits accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between the Council and such other person.

(6) Without prejudice to the generality of paragraphs (2) and (3), the Council may, in connection with the construction of the scheduled works—

- (a) provide a footpath between points F5 and F6 in the District of South Bedfordshire; and
- (b) provide a footpath between points F18, F23 and F24 in the Borough of Luton.

(7) Paragraphs (3), (4), (5) and (6) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain land) to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

5. In constructing or maintaining any of the scheduled works, the Council may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans, and
 - (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards.

Streets

Power to alter layout of streets

6.—(1) The Council may alter the layout of any street specified in columns (1) and (2) of Schedule 3 (streets subject to alteration of layout) to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the Council may for the purpose of constructing, maintaining or using the authorised busway alter the layout of any street within the Order limits; and, without prejudice to the generality of the foregoing, the Council may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for buses or by carrying out other works for that purpose;
- (d) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than guided buses from passing along the authorised busway; and
- (e) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Power to keep apparatus in streets

7.—(1) The Council may, for the purposes of or in connection with the construction, maintenance and use of any authorised works, place and maintain in any street having a junction with or being in the vicinity of the authorised busway any work, equipment or apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

8.—(1) The Council may, for the purpose of exercising the powers conferred by article 7 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street within the Order limits and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Stopping up of streets

9.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be stopped up) to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to the letters and numbers shown on the deposited plans in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Council is in possession of the land, or
- (b) there is no right of access to the land from the street concerned, or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned, or
- (d) the owners and occupiers of the land have agreed to the stopping up.

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

- (a) all rights of way over or along the street so stopped up shall be extinguished, and
- (b) the Council may appropriate and use for the purposes of the authorised busway so much of the site of the street as is bounded on both sides by land owned by the Council.

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

(7) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Temporary stopping up of streets

10.—(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

(2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 (streets to be temporarily stopped up) to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans in column (3) of that Schedule.

(4) The Council shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority, and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(6) The provisions of the 1991 Act referred to in paragraph (5) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and
- all such other provisions as apply for the purposes of the provisions mentioned above.

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

Access to works

- 11.** The Council may, for the purposes of the authorised works—
- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 (access to works) to this Order at or about the points marked “A”; and
 - (b) with the approval of the highway authority (such approval not to be unreasonably withheld) form and lay out means of access or improve existing means of access at such other locations within the Order limits as the Council reasonably require for the purposes of the authorised works.

Construction and maintenance of new or altered streets

12.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under an authorised busway.

(4) Any footpath to be provided under this Order shall be provided in accordance with the reasonable requirements of the highway authority and once open for use shall be maintained by and at the expense of the highway authority.

(5) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

(6) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(7) Paragraphs (1), (2) and (4) shall not apply in relation to the construction and maintenance of Work Nos. 1A, 1B, 1C, 1E, 1K and 1L.

Construction of bridges and tunnels

13.—(1) Any bridge or tunnel to be constructed under this Order for carrying a highway over or under an authorised busway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

(2) In constructing any new bridges the Council may do either or both of the following—

- (a) hold, use and appropriate such parts of the original bridges as they may require for the purposes of the new bridges or for any purposes ancillary to their undertaking;
- (b) take down and remove such parts of the original bridges as they do not require for those purposes.

(3) Notwithstanding article 47 (application of existing enactments), all of the powers and obligations that may be conferred or imposed upon the Council by the 1855 Act in relation to the original bridges shall cease to have effect.

(4) In this article—

“1855 Act” has the same meaning as in article 47 (application of existing enactments);
 “the new bridges” means the new bridges or tunnels proposed to be constructed under this Order to carry highways over or under an authorised busway; and
 “the original bridges” means the bridges or tunnels authorised to be constructed under the 1855 Act.

Agreements with street authorities

- 14.—(1) A street authority and the Council may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under an authorised busway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under an authorised busway;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order, or
 - (d) the execution in the street of any of the works referred to in article 8(1) (power to execute street works).
- (2) Such an 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, and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplementary

Discharge of water

15.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works 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) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(1).

(7) In this article—

(1) 1991 c. 57.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, canals, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter and survey any building falling within paragraph (1) and any land belonging to it.

(4) For the purpose of carrying out protective works under this article to a building the Council may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, 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;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

the Council shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of their 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 notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 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 54 (arbitration).

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

(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 works constructed within the vicinity of the building is first opened for use, it appears that

the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,
the Council shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated, and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

17.—(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on any such land 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 any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 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 Council—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The Council shall make compensation for any damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Town and country planning

18.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽²⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽³⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽⁴⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(4) Translink shall be regarded as a road transport undertaking for the purposes of section 262(1) of the 1990 Act (meaning of “statutory undertakers”).

(2) S.I. 1969/17.

(3) S.I. 1975/148.

(4) S.I. 1999/1892.