STATUTORY INSTRUMENTS

2015 No. 1984

INFRASTRUCTURE PLANNING

The Port Talbot Steelworks Generating Station Order 2015

Made - - - -	*8th December 2015*
Coming into force - -	*30th December 2015*

An application under section 37 of the Planning Act 2008(**1**) (the "2008 Act") has been made to the Secretary of State for an order granting development consent.

The application has been examined by a single appointed person who has made a report to the Secretary of State under section 83(1) of the 2008 Act. After receiving the report, the Secretary of State requested further information from various persons.

The Secretary of State has considered the report and recommendation of the single appointed person, has taken into consideration the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**2**) 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 in sections 114 and 120 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port Talbot Steelworks Generating Station Order 2015 and comes into force on 30th December 2015.

(**1**) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 104(2) was amended by paragraph 49 of that Schedule and section 58 of the Marine and Coastal Access Act 2009 (c.23). Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(**2**) S.I. 2009/2263; regulation 3 was amended by S.I. 2012/635 and 2012/787.

Interpretation

2.—(1) In this Order—

"1961 Act" means the Land Compensation Act 1961(**3**);

"1965 Act" means the Compulsory Purchase Act 1965(**4**);

"1980 Act" means the Highways Act 1980(**5**);

"1990 Act" means the Town and Country Planning Act 1990(**6**);

"1991 Act" means the New Roads and Street Works Act 1991(**7**);

"2008 Act" means the Planning Act 2008;

"apparatus" has the same meaning as in Part 3 of the 1991 Act(**8**);

"authorised development" means the development set out in Schedule 1 (authorised development);

"book of reference" means the document certified by the Secretary of State under article 22 (certification of plans, etc.) as the book of reference;

"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(**9**);

"design and access statement" means the document certified by the Secretary of State under article 22 as the design and access statement;

"design principles document" means the document certified by the Secretary of State under article 22 as the design principles document;

"environmental statement" means the document certified by the Secretary of State under article 22 as the environmental statement;

"highway" has the same meaning as in the 1980 Act(**10**);

"highway authority" has the same meaning as in the 1980 Act(**11**);

"land plans" means the plans certified by the Secretary of State under article 22 as the land plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of "maintain" must be construed accordingly;

"Order land" means the land required for or affected by the authorised development shown on the land plans and described in the book of reference;

"Order limits" means the limits shown on the works plans;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(**12**);

"relevant planning authority" means Neath Port Talbot County Borough Council as the planning authority for the area in which the authorised development is situated;

(**3**) 1961 c.33.
(**4**) 1965 c.56.
(**5**) 1980 c.66.
(**6**) 1990 c.8.
(**7**) 1991 c.22.
(**8**) "Apparatus" is defined in section 105(1).
(**9**) "Carriageway" is defined in section 329(1).
(**10**) "Highway" is defined in section 328(1).
(**11**) See section 1.
(**12**) 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34).

"Requirement" means a Requirement set out in Schedule 2 (Requirements); and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Schedule with the same number;

"street" means a street within the meaning of section 48 of the 1991 Act(**13**) together with land on the verge of a street or between 2 carriageways and includes part of a street;

"substation works" means the modifications to the Grange and Cefn Gwrgan substations comprising Work No. 2(b);

"undertaker" means Tata Steel UK Limited(**14**) (company number 2280000) or any other person who for the time being has the benefit of this Order in accordance with article 7 (consent to transfer benefit of Order);

"watercourse" includes any river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

"Work" means a Work set out in Schedule 1; and a reference to a Work designated by a number, or by a combination of letters and numbers (for example, "Work No. 1A"), is a reference to the Work so designated in that Schedule;

"works plans" means the plans certified by the Secretary of State under article 22 as the works plans.

(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.

(3) All distances, directions and lengths referred to in this Order are approximate, and distances between points on a Work must be taken to be measured along that Work.

(4) In this Order, "includes" must be construed without limitation.

(5) References in this Order to any statutory body include that body's successor bodies as from time to time have jurisdiction in relation to the authorised development.

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

PART 2

PRINCIPAL POWERS

Development consent granted by 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 and in accordance with the works plans.

(2) In constructing or maintaining a Work, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that Work and shown on those plans.

(3) Schedule 2 (which contains the Requirements) has effect.

Power to maintain authorised development

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

(**13**) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).
(**14**) The registered office of Tata Steel UK Limited is 30 Millbank, London SW1P 4WY.

(2) In maintaining the authorised development, the undertaker may remove or replace any constituent part, but not the whole, of a Work.

Operation of generating station

5.—(1) The undertaker is authorised to operate the generating station for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a permit or licence under any legislation that may be required from time to time to authorise the operation of a generating station.

Benefit of Order

6. Subject to article 7, the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

7.—(1) The undertaker may with the consent of the Secretary of State—

(a) transfer to another person (the "transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed 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 and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) The requirement to obtain the consent of the Secretary of State under paragraph (1) does not apply to a transfer or grant to a licence holder within the meaning of Part 1 of the Electricity Act 1989(**15**) of the benefit of such provisions of this Order and related statutory rights as may be agreed between the undertaker and the licence holder as being reasonably necessary for the purposes of carrying out the substation works.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under this article 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 making the transfer or grant.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**16**) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with the noise management plan approved by the relevant planning authority under Requirement 11 (approval and implementation of construction mitigation plans);

(**15**) 1989 c.29. See section 64(1).
(**16**) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

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

(c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the use of the authorised development in accordance with a noise management scheme approved by the relevant planning authority under Requirement 14 (control of noise during operational phase); or

(d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(**17**) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) does not 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.

PART 3

STREETS

Street works

9.—(1) In relation to any of the streets within the Order limits, the undertaker may, for the purposes of the authorised development,—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street or change its position; 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) Sections 54 to 106 of the 1991 Act(**18**) apply to any street works carried out under paragraph (1).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

10.—(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.

(**17**) 1974 c.40. Section 61(9) was amended by paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.
(**18**) A number of these provisions have been amended, including by the Traffic Management Act 2004 (c.18).