STATUTORY INSTRUMENTS

2015 No. 1317

INFRASTRUCTURE PLANNING

The White Moss Landfill Order 2015

Made - - - -	*19th May 2015*
Coming into force - -	*9th June 2015*

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(**1**) for an order under sections 37, 115, 117, 120 and 122 of the Planning Act 2008(**2**). The Secretary of State, in exercise of the powers conferred by section 114 of the Planning Act 2008, makes the following Order:

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the White Moss Landfill Order 2015 and comes into force on 9th June 2015.

Interpretation

2.—(1) In this Order—

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

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

(**1**) SI 2009/2264 (as amended)
(**2**) 2008 c.29. (as amended)
(**3**) 1961 c.33. (as amended)
(**4**) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by Part 1 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of,

"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(**8**));

"ancillary works" means the ancillary works described in Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

"application land" means the land on which the authorised project may take place and shown edged red on the application plan;

"application plan" means plan reference WS010003/WLL/PLANS/APPLICATION BOUNDARY indicating the extent of the application land;

"authorised development" means the development and associated development described in Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"authorised project" means the authorised development and the ancillary works authorised by this Order;

"book of reference" means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act;

"county planning authority" means Lancashire County Council;

"the environmental statement" means the document submitted with the application as the environmental statement, as amended and updated during the examination;

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

"land plan" means the plan certified as the land plan by the decision-maker for the purposes of this Order with reference WS010003/WLL/PLANS/LAND, drawing reference WL/Wl/10-14/18186;

"limits of deviation" means the limits of deviation referred to in article 8;

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and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(**5**) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and l(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c,15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**6**) 1990 c.8. section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(**7**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(**8**) 2008 c.29. (as amended)

"maintain" includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, replace and improve, but not so as to vary from the description of the authorised project in Schedule 1, and not such as to give rise to any significant adverse environmental effects that have not been assessed in the environmental statement or any supplementary information supplied pursuant to The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**9**), and "maintained" and "maintenance" are to be construed accordingly;

"Order land" means the land shown on the land plan which is in the limits of the land to be acquired and described in the book of reference;

"Order limits" means the limits shown on the works plan within which the authorised project may be carried out;

"owner" in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**10**);

"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 part of a street;

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

"undertaker" means in relation to any provision of this Order, Whitemoss Landfill Limited and its successors in title, as well as any party to whom the benefit of the Order has been transferred pursuant to article 6;

"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;

"works plan" means the plan certified as the works plan by the decision-maker for the purposes of this Order with reference WS010003/WLL/PLANS/WORKS.

(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 comprised in the authorised project are to be taken to be measured along that work.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to the requirements in Schedule 2 attached to this Order the undertaker is granted—

(1) development consent for the authorised development; and

(2) consent for the ancillary works,

to be carried out within the Order limits.

Maintenance of authorised project

4. The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

(**9**) SI 2009/2263 (as amended)

(**10**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

Benefit of Order

5. The provisions of this Order have effect solely for the benefit of the undertaker (save in circumstances where the benefit of the Order has been transferred to a relevant third party in accordance with the terms of article 6 (Consent to transfer benefit of Order), in which case the benefit extends to that third party).

Consent to transfer benefit of Order

6.—(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 so agreed.

(2) Where an agreement 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.

Procedure in relation to approvals etc. under requirements

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

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions); and

(b) subject to (c) below, any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission; and

(c) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 apply to applications for approval of any matter in pursuance of any requirement imposed by this Order.

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

Power to deviate

8. The undertaker may deviate from the lines or situations shown on the works plan and the elevation plans to the extent of the limits of deviation shown on those plans.

PART 3

SUPPLEMENTAL POWERS

Discharge of water

9.—(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 project 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(**11**) (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, but is not to be unreasonably withheld.

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(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 is prohibited by Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(**12**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits 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;

(**11**) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99. There are other amendments to section 106 which are not relevant to this Order.
(**12**) SI 2010/675 (as amended).