STATUTORY INSTRUMENTS

2015 No. 147

INFRASTRUCTURE PLANNING

The Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015

Made - - - -	*5th February 2015*
Coming into force - -	*26th February 2015*

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 Procedures) Regulations 2009(**2**) for an order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**3**).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120 and 122 of, and paragraphs 1 to 3, 10 to 17, 19, 22, 23, 26, 33, 36 and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

(**1**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**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 and S.I. 2013/755.
(**3**) S.I. 2010/103, amended by S.I. 2012/635.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015 and comes into force on 26th February 2015.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**4**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**5**);

"the 1980 Act" means the Highways Act 1980(**6**);

"the 1990 Act" means the Town and Country Planning Act 1990(**7**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**8**);

"the 2008 Act" means the Planning Act 2008;

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

"the book of reference" means the book of reference certified by the Secretary of State 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;

"carriageway" has the same meaning as in the 1980 Act;

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

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"environmental impact assessment" means the assessment of the environmental impact of the authorised development, the findings of which are recorded in the environmental statement and all other environmental information submitted during the examination;

"the environmental statement" means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**9**) and 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;

(**4**) 1961 c. 33.
(**5**) 1965 c. 56.
(**6**) 1980 c. 66.
(**7**) 1990 c. 8.
(**8**) 1991 c. 22.
(**9**) S.I. 2009/2264. Regulation 5 was amended by S.I. 2012/635.

"the land plan" means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 5 (limits of deviation);

"local planning authority" means the Cornwall Council;

"maintain" includes inspect, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly;

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

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

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

"the sections" means the sections identified in the definition of "approved plans" contained in requirement 1(1) (interpretation) and certified as the sections by the Secretary of State for the purposes of this Order;

"the Special Category Replacement Land plans" means the plans certified as the Special Category Replacement Land plans by the Secretary of State for the purposes of this Order;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) 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;

"street plan" means the plan certified as the street plan by the Secretary of State for the purposes of this Order;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means the person who has the benefit of this Order in accordance with articles 6 (benefit of Order) and 7 (consent to transfer benefit of Order);

"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; and

"the works plan" means the plan identified in the definition of "approved plans" contained in requirement 1(1) and certified as the works plan 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 airspace 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 development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the street plans as the case may be.

(**10**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

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 (requirements) the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

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

Limits of deviation

5. In carrying out those works numbered 1 to 5 (inclusive) in Schedule 1 (authorised development) the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and

(b) deviate vertically from the levels shown on the sections to any extent not exceeding 1 metre upwards or downwards.

Benefit of Order

6. Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Cornwall Council.

Consent to transfer benefit of Order

7.—(1) The undertaker may—

(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.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where the transfer or grant is made to the Secretary of State.

PART 3

STREETS

Power to alter layout etc. of streets

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the streets specified in column (2) of Schedule 3 (streets subject to alteration of layout) in the manner described in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraph (3) the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker 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 such kerb, footway, cycle track or verge;

(c) reduce the width or the carriageway in the street; and

(d) make and maintain passing places or lay-bys.

(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) are not to be exercised without the consent of the street authority; but such consent must not be unreasonably withheld.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits 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 or change its position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.