

TRANSPORT AND WORKS ACT 1992

INQ

TOWN AND COUNTRY PLANNING ACT 1990

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

THE PROPOSED NETWORK RAIL
(CAMBRIDGE SOUTH INFRASTRUCTURE ENHANCEMENTS) ORDER

NOTE 6 – ARTICLE 35 DRAFTING

Introduction

1. The purpose of this note is to explain why the proposed drafting of the amended article 35 is necessary and appropriate for inclusion within the Proposed Order. The note has been shared with Greater Cambridge Shared Planning, representing both Cambridge City Council and South Cambridgeshire District Council. Whilst not formally agreed, it is understood that subject to a drafting point relating to the definition of the relevant planning permissions (see (7) below), the Councils do not take issue with the proposed drafting.
2. The drafting has also been agreed by AstraZeneca and University of Cambridge as regards their own respective permissions.

The principle

3. Section 5(4)(a)(i) and (b) of the Transport and Works Act 1992 provides that an Order may include any provision “*that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order*” and “*such supplemental and transitional provisions as appear to [the Secretary of State] to be necessary or expedient in connection with the order*”. Paragraph 8 of Schedule 1 makes it clear that an Order may make provision

for "The imposition and exclusion of obligations or of liability in respect of any acts or omissions". This confirms the in-principle lawfulness of using an Order to prevent the taking of enforcement action in relation to a failure by a party to comply with conditions upon a planning permission (such failure being an omission on the relevant party's part).

4. An analogous approach has been taken by a number of development consent orders¹ under the Planning Act 2008, which have provided that conditions of an earlier planning permission that are rendered impossible to discharge by a later DCO are to have no effect. The precise drafting of each DCO depend on its factual situation, but they confirm that the approach taken by the amendments to article 35 is appropriate where a later order conflicts with an existing planning permission.

Drafting

5. The need for the relevant clauses of the proposed Article on the facts of this case is explained below, by reference to the relevant paragraphs within the article.

"(4) The AstraZeneca conditions and University conditions have no effect within the Order limits.

This is required because the carrying out of the CSIE Project within the Order Limits will prevent compliance with the AstraZeneca and University conditions. See (7) below as to the definition of the AstraZeneca/University conditions.

(5) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the AstraZeneca permission (whether or not within the Order limits)

¹ See for instance article 4 of the Hinkley Point C (Nuclear Generating Station) Order 2013 (2013 No. 648), art. 6 of the Riverside Energy Park Order 2020 (2020 No. 419), and art. 5 of South Humber Bank Energy Centre Order 2021 (2021 No. 1259)

from being carried out in accordance with any of the AstraZeneca conditions,

then to that extent–

- (a) there is deemed to be no breach of the AstraZeneca conditions concerned, and
- (b) no enforcement action may be taken in respect of the development carried out under the AstraZeneca permission.

The purpose of this clause is to prevent AstraZeneca being the subject of enforcement action for breach of the AstraZeneca conditions (as defined, see (7) below) in circumstances where the non-compliance is a direct result of works that are carried out pursuant to the deemed planning permission granted in respect of the CSIE Project.

The drafting has been designed to secure that the clause is engaged only where the carrying out of any works pursuant to the deemed planning permission actually prevents (rather than merely makes more difficult, or less convenient) development being carried out in accordance with those conditions.

Moreover, the use of the expression "To the extent that" means that if development in accordance with the AstraZeneca conditions can be carried out in part, the recipient of that permission will still be required to comply with them so far as remains possible.

This paragraph is engaged in relation to development that is both within the Order Limits and outside it. The reason for this is that it is known that that works carried out by the Applicant within the Order Limits pursuant to any deemed planning permission will prevent compliance with the AstraZeneca conditions on land that falls outside of the Order Limits but within the redline area of the AstraZeneca planning permission.

In particular, the acquisition of land by Network Rail and implementation of the CSIE Project makes it impossible for AstraZeneca to comply with the requirements to provide a landscaping buffer of a specific size on its retained site. This was noted in the AstraZeneca Statement of Case at [3.1.6].

Whilst it intended by the parties that a non-material amendment application will be made in relation to this issue, determination of that application sits with a third party (the City Council) and the clause seeks to protect AstraZeneca from enforcement action if the City Council or (in the event of an appeal) the Planning Inspectorate decline to deal with or refuse that application.

Whilst it may be suggested that sub-paragraph (a) alone is sufficient to ensure the protection of AstraZeneca from the taking of enforcement action, (b) is included 'for the avoidance of doubt'.

The exemption from enforcement action is therefore of limited application, but necessary and appropriate for the protection of AstraZeneca.

- (6) To the extent that the carrying out of any development in accordance with a direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the authorised works prevents any development permitted by the University permission (whether or not within the Order limits) from being carried out in accordance with any of the University conditions, then to that extent–
- (a) there is deemed to be no breach of University conditions concerned, and
 - (b) no enforcement action may be taken in respect of the development carried out under the University permission.

The drafting and rationale for this paragraph is the same as for the AstraZeneca paragraph above.

The same issues arise in relation to the ability of the University to comply with its approved landscaping outside the Order Limits. The Applicant's permanent land take means that the full extent of the approved landscaping scheme cannot be reinstated post construction of the CSIE Project. The Applicant has designed an outline reinstatement scheme that enables a large number of the trees and scrub to be planted within the

retained AMB site, but approx. 14No. trees will need to be located to the west side of the railway within Hobson's Park.

(7) In this article–

“the AstraZeneca conditions” mean conditions 42 and 45 of the AstraZeneca permission;

The AstraZeneca conditions in relation to which the protection from enforcement action applies are limited to two conditions; the first relating to the site-wide landscaping scheme, and the second relating to landscaping schemes for particular development plots.

Non-compliance with any other conditions is outwith the scope of, and protection afforded by, the article.

“the AstraZeneca permission” means the outline planning permission granted by Cambridge City Council on 15 October 2009 and given reference number 06/0796/OUT as amended by the outline planning permission granted by Cambridge City Council on 5 March 2015 and given reference number 14/2094/S73, with reserved matters approved by Cambridge City Council under the reference numbers 14/1633/REM, 19/1070/REM and 20/05027/REM and any further permission under section 73 of the 1990 Act or any non-material amendment to any of those permissions and approvals;

This part of the paragraph defines the relevant AstraZeneca permission. It includes any subsequent variations or non-material amendments to the specified permissions, to ensure that later permissions which replicate the specified conditions do not inadvertently lose the benefit of the protection intended.

“the University conditions” means mean conditions 42 to 47 of the University permission; and

The University conditions in relation to which the protection from enforcement action applies are limited to six conditions, all of which relate to landscaping.

Non-compliance with any other condition is outwith the scope of, and protection afforded by, the article.

“the University permission” means the outline planning permission granted by Cambridge City Council on 15 October 2009 and given reference number 06/0796/OUT as amended by the outline planning permission granted by Cambridge City Council on 5 March 2015 and given reference number 14/2094/S73, together with reserved matters approved by Cambridge City Council under reference number 16/0653/REM and any further permission under section 73 of the 1990 Act or any non-material amendments approved in relation to any of the aforementioned permissions and approvals.

This part of the paragraph defines the relevant University permission. It includes any subsequent variations or non-material amendments to the specified permissions, to ensure that later permissions which replicate the specified conditions do not inadvertently lose the benefit of the protection intended.