

Document 2

Draft 24-9-2014

Dated

20[xx]

[Name of nominated undertaker] (1)

[Name of local authority] (2)

The Historic Buildings and Monuments Commission for England (3)

High Speed Rail (London – West Midlands) Act 201[x]: Deed relating to works affecting the listed building comprising *[name of listed building as appearing in table 1 in Schedule 17 to the Bill]*

“the appointed person” means a person appointed by the Secretaries of State under clause 4 for the purpose of determining outstanding matters or referring them to those Secretaries of State for determination;

“EH related request” means a request for approval under this agreement which, if it were to comprise an application for listed building consent, would require notice to be given to English Heritage by virtue of paragraph 15(2) of circular 01/01 (as amended) of the Office of the Deputy Prime Minister;

“emergency” means circumstances where there is a risk to health and safety or to the preservation of the affected property such that any of the relevant construction works require to be carried out immediately;

“the national amenity societies concerned” means the [Ancient Monuments Society] [the Victorian Society] [the Twentieth Century Society] [the Georgian Group] [the Council for British Archaeology] [the Society for the Protection of Ancient Buildings];

“relevant construction works” means works to be carried out at or to the affected property under the powers conferred by the Act which do not require consent under section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 by virtue of paragraph 1 of Schedule [17] to the Act but which, were it not for those paragraphs, would require such consent;

“the Secretary of State” means the Secretary of State for Transport;

“the Secretaries of State” means the Secretary of State for Transport and the Secretary of State for Communities and Local Government;

“the works details” means in relation to relevant construction works concerning the affected property (a) method statements covering the matters set out in Part 2 of Schedule 1 hereto, and (b) particulars of any other relevant construction works proposed by the nominated undertaker for the purpose of maintaining or restoring the character of the property as a building of special architectural or historical interest or of monitoring movement of the property; and

“the works specification” means, in relation to the affected property, the works to the property specified in Part 1 of Schedule 1 hereto.

2 The carrying out of relevant construction works

2.1 Any relevant construction works relating to the affected property must either –

- (a) fall within or be ancillary to the works specification for the property,
- (b) fall within or be ancillary to a variation of that specification requested by the nominated undertaker and agreed in accordance with clause 3 or (in the event of a failure to agree) determined under clause 4,

- (c) be works for the mitigation of movement to the property or otherwise for the purpose of maintaining or restoring the character of the property as a building of special architectural or historical interest, or
- (d) comprise the affixing of apparatus with a view to measuring any movement in the property or the ground on which it is erected.

2.2 Before commencing relevant construction works relating to the affected property, the nominated undertaker must submit to the Council the works details for those works for its approval in writing, and the submission must –

- (a) include so far as relevant to the works details concerned the matters mentioned in Schedule 2 hereto, and
- (b) have regard to the background information set out in Part 3 of Schedule 1 hereto.

2.3 Subject to clause 2.9, the relevant construction works relating to the affected property must be constructed in accordance with the works details so approved or as may be determined under clause 4, and in accordance with any requirements subject to which the approval or determination is given.

2.4 The nominated undertaker must at the same time as submitting the works details under clause 2.2 send that information to the national amenity societies concerned and, in the case of an EH related request, English Heritage, and the Council must not approve the works details submitted to it unless either–

- (a) a period of 6 weeks¹ has elapsed after the submission, or
- (b) the national amenity societies concerned and, in the case of an EH related request, English Heritage have either given their comments on those details to the Council or have indicated that they do not intend to comment.

2.5 The approval of the Council of the works details –

- (a) must not be unreasonably withheld;
- (b) may be given subject to reasonable amendments or requirements.

2.6 The decision of the Council to approve or refuse approval of the works details –

¹ 9 weeks in the case of a Grade I or II* listed building.

- (a) must be given as soon as reasonably practicable and in any event (but subject to clause 2.7) within 8 weeks² of receipt of the details;
- (b) must be sent in writing to the nominated undertaker.

2.7 Where under clause 2.5(b) the Council proposes reasonable amendments or requirements to the works details (“the Council’s proposals”), the nominated undertaker must in writing within 4 weeks of receipt –

- (a) confirm acceptance of the Council’s proposals, or
- (b) propose further amendments to the Council’s proposals (“further amendments”), or
- (c) unless otherwise agreed between the Council and the nominated undertaker, apply for the matter to be determined under clause 4.

2.8 Where the nominated undertaker proposes further amendments under clause 2.7(b) the Council must in writing within 4 weeks of receipt –

- (a) confirm acceptance of the further amendments, or
- (b) unless otherwise agreed between the Council and the nominated undertaker, apply for the matter to be determined under clause 4.

2.9 Clauses 2.1 to 2.3 do not apply in a case of emergency, but the nominated undertaker must as soon as reasonably practicable inform –

- (a) the Council, and
- (b) English Heritage in a case where, if there were to be a request for approval of emergency works under this agreement, the request would comprise an EH related request,

of the nature of the emergency and the works to be carried out or which have been carried out, and must so far as reasonably practicable take into account any proposals made by the Council and (where English Heritage were required to be informed as aforementioned) by English Heritage, where the emergency works have not yet been carried out.

² 12 weeks in the case of a Grade I or II* listed building.

2.10 Where the carrying out of relevant construction works (whether approved for the purposes of this clause 2 or emergency works carried out under clause 2.9) causes damage to the affected property for the remedying of which provision is not made in approved method statements, the nominated undertaker must as soon as reasonably practicable submit details for the carrying out of remedial works to make good the damage (so far as such remedial works can reasonably be carried out notwithstanding the presence of the permanent works or other things constructed or installed under the Act), and the approvals procedures under clause 2.4 to 2.9 and clauses 3 and 4 shall apply to details submitted for the purposes of this clause 2.10 as they apply to works details submitted under clause 2.2; and subject to clause 2.11 the nominated undertaker must carry out the remedial works as so approved.

2.11 The duty to carry out remedial works under clause 2.10 is subject to the obtaining of any necessary consents, agreements or other approvals required for the purpose, which the nominated undertaker must use reasonable endeavours to obtain.

3 Changes to works specification or to approved works details

3.1 Where the nominated undertaker wishes to make changes to the works specification, or to any revised works specification or works details previously approved by the Council under this Deed or determined under clause 4, the nominated undertaker must submit a revised works specification or (as the case may be) further works details to the Council for approval.

3.2 The approvals procedures under clauses 2.4 to 2.9 and clause 4 shall apply to the revised works specification or (as the case may be) to the further works details as they apply to works details submitted under clause 2.2.

3.3 Where the nominated undertaker submits a revised works specification for approval under clause 3.1, the Council may, not later than the time at which it gives any approval to the revised works specification, specify in writing any changes to the matters set out in Part 2 of Schedule 1 hereto which in its opinion are required in consequence, and the extent to which any works details previously approved in relation to the works in question require to be resubmitted for approval; and where it does so the works details requiring approval under clause 2 shall (subject to clause 4.4 and any further change proposed under clause 3.1) have effect subject to the changes and requirements for resubmission so specified.

4 Determination

4.1 In the event that the nominated undertaker and the Council cannot agree all the elements of works details or of a revised works specification, either of them may submit any outstanding matter to the Secretary of State for the purpose of having an appointed person either determine that matter or (if so directed by the Secretaries of State) make recommendations to the Secretaries of State to enable the Secretaries of State to determine it.

4.2 The circumstances in which the nominated undertaker and the Council shall not be taken to have agreed for the purposes of clause 4.1 include a case where –

- (a) the nominated undertaker is dissatisfied with an amendment or requirement specified by the Council under clause 2.5(b), or

- (b) no decision is given by the Council in respect of a submission by the nominated undertaker within the period mentioned in clause 2.6(a).

4.3 In approving any works details or a revised works specification under this clause 4 the appointed person or the Secretaries of State may give the approval subject to any amendments or requirements which the Council could specify under clause 2.5(b) or (in the case of a revised works specification) clause 3.3, and the determination of the appointed person or of the Secretaries of State shall be final and binding.

4.4 If the nominated undertaker is dissatisfied by any change specified, or requirement for resubmission made, by the Council under clause 3.3, the preceding provisions of this clause 4 shall also apply for the determination of the dispute as they apply to a failure to agree the revised works specification to which the change or resubmission relates.

5 Co-operation and consultation

5.1 The nominated undertaker, the Council and where relevant English Heritage agree to co-operate so as to secure the efficient and timely operation of the processes for approval in this Deed, and in particular (and with a view to securing those ends) to consult each other regularly on the timing and likely particulars of submissions for approval under this Deed in advance of the submissions being made.

5.2 Where the Council approves settlement particulars submitted to it under this Deed subject to amendments or requirements, or where the nominated undertaker amends its settlement particulars or includes provisions within its settlement particulars to give effect to proposals of the Council, where reasonably required the Council must give relevant assistance to the nominated undertaker in connection with any arbitration under paragraphs 2 to 6 of Schedule [2] to the Act or under any provision for the resolution of disputes included in an agreement with a person with an interest in the building concerned; and where such amendments, requirements or proposals arise from recommendations of English Heritage, English Heritage must give the like assistance.

5.3 In clause 5.2 –

“relevant assistance” means appearing and/or giving evidence at arbitration or dispute resolution proceedings or making oral or written statements and submissions at or for such proceedings, as reasonably required by the nominated undertaker; and

“settlement particulars” means such of any works details as relates to the mitigation of movement to the affected property.

IN WITNESS of which the parties have executed this Deed and have delivered it on the date first above written.

Executed as a deed by [nominated undertaker]

acting by:

.....Director/Secretary

.....Director

)

[Sealing provision for the Council]

)

)

The Common Seal of the Historic Buildings)
and Monuments Commission for England)
was affixed in the presence of:)

.....

Schedule 1

[name of listed building]

Part 1 – Works Specification

1. *[Insert particulars]*

Part 2 – Method Statement details

1. A method statement is to deal with:

[Insert particulars]

Part 3 – Background context information concerning the building

[Insert particulars]

Schedule 2

Information to accompany submissions of works details

The matters which, so far as relevant, are to be included in a submission under clause 2.2 comprise:

- a description of the building and the part(s) affected by the works and their historical significance;
- an up to date location plan at a scale not smaller than 1:1,250;
- as existing survey drawings of the areas of the building affected by the works (including interior features and fittings of historic interest and the extent of the fabric loss) at a suitable scale (floor plans, elevations and sections);
- general and detailed photographs of the areas affected including of any highly modelled or decorative features to be removed;
- where highly modelled/decorative items or items of particular value (e.g. high quality windows or pillars) are to be removed, appropriate larger scale drawings;
- a description of the proposed works in sufficient detail for officers properly to understand the proposals, including details of materials and finishes;
- drawings at a suitable scale showing the proposed works, including any construction phase drawings to inform the proposals.