

Document 4

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 listed buildings specified in table 2 in Schedule [17] to the Act

“decontrolled works” means works proposed by the nominated undertaker for the alteration or extension of a listed building in the area of the Council which is not an excluded building, being works which fall within paragraph 2(2)(a) of Schedule [17] to the Act and which do not require consent under section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 by virtue of paragraph 2 of Schedule [17] to the Act but which would affect the character of the building as a building of special architectural or historic interest (whether carried out in exercise of the nominated undertaker’s powers under paragraph 2 to 6 of Schedule [2] to the Act or under any agreement reached by it with a person with an interest in the building);

“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 an affected property such that any of the decontrolled works require to be carried out immediately;

“excluded building” means a building which is exempt from the provisions of section 7 to 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 by virtue of –

- (a) section 60 (ecclesiastical buildings) of that Act (ignoring the restriction in article 7(2) of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 or any similar provision under any subsequent order under that section), or
- (b) section 61 (scheduled monuments) of that Act;

“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;

2 The carrying out of decontrolled works

2.1 Subject to clause 2.7, the nominated undertaker must not carry out any decontrolled works except in accordance with particulars submitted by it to the Council, and approved by the Council or determined under clause 4.

2.2 In the case of an EH related request, the nominated undertaker must at the same time as submitting particulars under clause 2.1 send that information to English Heritage, and the Council must not approve the particulars submitted to it unless either –

- (a) a period of 6 weeks or, in the case of a Grade I or II* listed building, 9 weeks has elapsed after the submission, or

- (b) English Heritage have either given their comments on those particulars to the Council or have indicated that they do not intend to comment.

2.3 The approval of the Council of particulars of decontrolled works –

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

2.4 The decision of the Council to approve or refuse approval of particulars of decontrolled works –

- (a) must be given as soon as reasonably practicable and in any event (but subject to clause 2.5) –
 - (i) within 8 weeks of receipt of the particulars in the case of a Grade II listed building, and
 - (ii) within 12 weeks of receipt of the particulars in the case of a Grade I or II* listed building;
- (b) must be sent in writing to the nominated undertaker.

2.5 Where under clause 2.3(b) the Council proposes reasonable amendments or requirements to the particulars of decontrolled works (“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.

2.6 Where the nominated undertaker proposes further amendments under clause 2.5(b) the Council shall 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.

2.7 Clause 2.1 does not apply in the case of emergency, but the nominated undertaker must inform the Council and, 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, English Heritage, as soon as reasonably practicable 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.

3 Changes to decontrolled works

3.1 Where the nominated undertaker wishes to make changes to particulars of decontrolled works previously approved by the Council under this Deed or determined under clause 4, the nominated undertaker must submit revised particulars of the decontrolled works to the Council for approval.

3.2 The approvals procedures under clauses 2.2 to 2.7 and clause 4 shall apply to the revised particulars as they apply to particulars submitted under clause 2.1.

4 Determination

4.1 In the event that the nominated undertaker and the Council cannot agree all the elements of the decontrolled works, 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 2.3(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 2.4(a).

4.3 In approving any particulars of decontrolled works 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 2.3(b), and the determination of the appointed person or of the Secretaries of State shall be final and binding.

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 particulars of decontrolled works subject to amendments or requirements, or where the nominated undertaker amends its particulars of decontrolled works or includes provisions within its particulars of decontrolled works to give effect to proposals of the Council, where reasonably required the Council shall 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 shall 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.

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:)

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