ELIZABETH II

1988 CHAPTER xix

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Bredero (Bon Accord Centre, Aberdeen).

[29th July 1988]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament: 1936 c. 52.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Confirmation of Order in Schedule.

1. The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.

Short title.

2. This Act may be cited as the Bredero (Bon Accord Centre, Aberdeen) Order Confirmation Act 1988.

SCHEDULE

BREDERO (BON ACCORD CENTRE, ABERDEEN)

Provisional Order to authorise Bredero Aberdeen Centre Limited to construct a building or structure bridging over Loch Street in the district of the City of Aberdeen; and for other purposes.

1985 c. 6.

WHEREAS Bredero Aberdeen Centre Limited (hereinafter referred to as "the Company") is a company within the meaning of the Companies Act 1985 having objects which include the acquisition, management and development of land:

And whereas the City of Aberdeen District Council (hereinafter referred to as "the district council") have secured the designation by the Secretary of State for Scotland of an area of comprehensive development known as the Central Comprehensive Development Area Aberdeen and have entered into agreements under which the Company is to develop that part of the said area known as Area B:

And whereas pursuant to the said agreements and the grant of a building lease and planning permission by the Council, the Company has commenced the development of the said Area B to provide a shopping centre as well as offices, dwelling-houses and other works and facilities:

And whereas it is expedient for the utilisation to the best advantage of the said shopping centre and neighbouring shopping facilities that the development should incorporate a building or structure bridging over the public road adjacent to the said shopping centre and known as Loch Street so as to provide a pedestrian and vehicular link over that road:

And whereas it is accordingly expedient that the Company should be authorised to construct such a building or structure as in this Order provided and that the other provisions of this Order should be enacted:

And whereas a plan and section showing the line and levels of the work authorised by this Order, such plan showing also the lands which may be used under the powers of this Order and for the purposes of this Order, together with a book of reference to the said plan containing the names of the owners or reputed owners, lessees or reputed lessees and of the occupiers of all such lands and describing the same, have been deposited with the sheriff clerk of the Sheriff Court District of Aberdeen and such plan, section and book of reference are respectively referred to in this Order as the deposited plan, section and book of reference:

And whereas the purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936: 1936 c. 52.

Now, therefore, in pursuance of the powers contained in the last-mentioned Act the Secretary of State orders as follows:—

Short title.

1. This Order may be cited as the Bredero (Bon Accord Centre, Aberdeen) Order 1988.

Interpretation.

2. In this Order, unless the subject or context otherwise requires—

"the Company" means Bredero Aberdeen Centre Limited;

"the district" means the district of the City of Aberdeen;

"the district council" means the City of Aberdeen District Council;

"the limits of deviation" means the limits of deviation shown on the deposited plan;

"Loch Street" means the public road of that name in the district;

"the regional council" means the Grampian Regional Council;

"the work" means the work described in section 3 (Power to carry out the work) of this Order and includes the same as renewed or altered under subsection (2) of the said section 3 and any works constructed under section 4 (Subsidiary works) of this Order.

Power to carry out the work.

3.—(1) Notwithstanding anything in any other enactment or rule of law affecting Loch Street or any interest or other right of the public, the inhabitants at large or other persons in, on or over Loch Street, but subject to the provisions of this Order, the Company may make in the line and situation and upon the lands delineated on the deposited plan and described in the deposited book of reference and according to the levels shown on the deposited section, the work hereinafter described, that is to say:—

A building or structure across and above the level of Loch Street, incorporating pedestrian and vehicular ways to link adjacent development, commencing at National Grid reference point NJ94020 06524, 17 metres or thereabouts south of the southern elevation of the building known as Norco House and extending 13·5 metres or thereabouts in a southerly direction before terminating.

(2) Subject to the provisions of this Order the Company may, from time to time within the limits of deviation, maintain and renew the work or any part thereof and may make minor alterations thereto.

Subsidiary works.

4.—(1) Subject to the provisions of this Order, the Company for the purposes of or in connection with the work may within the limits of deviation—

(*a*) construct, execute, place and keep all such minor subsidiary works and conveniences as may be necessary or expedient for or in connection with the construction, maintenance or renewal of the work or the making of minor alterations thereto;

(*b*) temporarily or permanently alter, open up or otherwise interfere with Loch Street or use, strengthen, widen, divert, improve, alter or otherwise interfere with drains, sewers, telegraphic, telephonic, electric, gas, water and other pipes, lines, wires, works and apparatus (all of which are hereinafter in this section referred to as "apparatus") in Loch Street providing where possible a proper substitute before interrupting the passage of sewage, electricity, gas or water in or through any apparatus.

(2) In the exercise of the powers conferred by subsection (1) above the Company shall cause as little detriment and inconvenience as the circumstances permit to any person and shall make reasonable compensation for any loss or damage caused to any person by the exercise of such powers.

(3) (*a*) Not less than 42 days before commencing any work under paragraph (*b*) of subsection (1) above affecting any apparatus the Company shall submit to the appropriate authority sufficient plans, sections and particulars of the proposed works for their approval, which shall not be unreasonably withheld.

(*b*) The Company shall execute such works in accordance with such plans, sections and particulars as may be submitted to and approved by the appropriate authority or, if such approval be refused, as may be settled by arbitration and all such works shall be executed to the reasonable satisfaction of the appropriate authority and the Company shall at all times afford to the representative of the appropriate authority access for the purpose of inspecting such works.

(*c*) If any difference shall arise between the Company and any person with respect to any of the matters referred to in this subsection or, in subsection (2) above, as to the fact of damage or compensation therefor, such difference shall be referred to and settled by arbitration; provided always that the award or decision of an arbiter shall not relieve the Company of its liability to make compensation to the person concerned.

(*d*) In this subsection "the appropriate authority" means the person to whom the apparatus belongs or by whom it is repairable.

Power to deviate.

5. In the construction of the work the Company may deviate laterally from the line or situation thereof shown on the deposited plan to any extent not exceeding the limits of deviation shown on that plan and may deviate vertically from the levels shown on the deposited section to any extent upwards or downwards:

Provided that no part of the work shall be constructed at a height above the surface of the carriageway of Loch Street less than 5·3 metres.

Temporary stoppage of roads.

6.—(1) The Company during and for the purposes of the construction, maintenance, renewal or alteration of the work may temporarily stop up, divert or otherwise interfere with any road and may for any reasonable time divert the traffic therefrom and prevent all persons from passing along, occupying or otherwise using the same under whatsoever right or title.

(2) The Company shall not exercise the powers of this section—

(*a*) without the consent of the roads authority but any such consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be determined by the Secretary of State;

(*b*) so as to deprive foot-passengers bona fide going to or from any building or land abutting on a road of reasonable access to the building or land.

(3) The Company shall not exercise the powers of this section with respect to any road unless it has given not less than 21 days' previous notice in writing of its intention so to do to—

(*a*) the traffic commissioner in whose area the road is situate; and

(*b*) the operator over that road of a local service as defined in the Transport Act 1985;

1985 c. 67.

except in case of emergency when such notice as is practicable shall be given.

Acquisition of rights in or over Loch Street.

7. Notwithstanding anything in any other enactment or rule of law, such rights and interests in, and in the air space above, Loch Street as have been acquired by the Company from the district council before the passing of the Act confirming this Order or as may thereafter be so acquired, being rights and interests acquired or to be acquired for the purposes of or in connection with the construction, maintenance, renewal or alteration of the work, shall, as from the passing of the Act confirming this Order, be deemed to be free from any beneficial interest or other right of the public, the inhabitants at large or other person.

Power to transfer work.

8. The Company may from time to time, whether before, during or after construction of the work, transfer its interest in the work and its rights under this Order to another person; and the transferee shall have and may exercise to the extent authorised by his conveyance or lease (as the case may be) all or any of the powers conferred upon the Company by this Order in relation to the work but shall be subject to all restrictions, liabilities and obligations in respect of the work to which the Company is subject and shall perform all the duties of the Company under this Order in respect of the same.

General saving for local authorities, etc.

9. Nothing in this Order shall prejudice, take away, diminish, alter or abridge any statutory or other rights, powers, privileges, jurisdictions or authorities acquired by, vested in or enjoyed by the regional council or the district council and all such rights, powers, privileges, jurisdictions and authorities shall continue to be held, exercised and enjoyed as if the Act confirming this Order had not been passed.

For protection of statutory undertakers.

10. For the protection of the undertakers the provisions of this section shall, unless otherwise agreed in writing between the Company and the undertakers, apply and have effect—

(1) In this section—

"apparatus" means any gas main, cable, sewer, drain, water main or pipe or other pipe or apparatus and any electric line or works (respectively defined in the Electric Lighting Act 1882) belonging to the undertakers and includes any building, structure or works constructed for the lodging therein of apparatus; 1882 c. 56.

"in" in a context relating to apparatus includes under, over, across, along or upon;

"plans" means plans, sections, elevations, working drawings and specifications;

"position" includes depth;

"relevant services" means, in relation to British Gas plc and the North of Scotland Hydro-Electric Board, a continuous supply of gas or electricity (as the case may be); and, in relation to the regional council, a continuous supply of street lighting, water and the free passage of water and sewage;

"specified work" means any such part of the work as in its execution and maintenance will or may interfere with or affect any apparatus;

"the undertakers" means, in relation to apparatus belonging to or maintained by them, the following statutory undertakers, namely British Gas plc, the regional council in relation to its several statutory functions as roads authority, sewerage authority, water authority and otherwise, and the North of Scotland Hydro-Electric Board, or any of them, as the case may be;

references to the acts or defaults of the Company include the acts or defaults of its workmen or servants or of its contractors or agents or the workmen or servants of such contractors or agents:

(2) The powers conferred on the Company by paragraph (*b*) of subsection (1) of section 4 (Subsidiary works) of this Order shall not be exercised in respect of any apparatus otherwise than in accordance with the provisions of this section and in relation to such apparatus subsection (3) of that section shall not apply:

(3) Not less than 42 days before commencing any specified work the Company shall give the undertakers notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and

also showing the means to be employed by the Company not only for protecting the apparatus during the execution of such specified work and for securing the relevant services but also for making good any damage to or interference with the apparatus resulting from the execution of such specified work; and, if it should reasonably appear to the undertakers that such specified work will interfere with, damage or endanger their apparatus or materially impede the relevant services the undertakers may within 35 days of the receipt of such notice require the Company to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be reasonably required by the undertakers in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

(4) If the undertakers do not impose a requirement on the Company as aforesaid the Company may proceed with the execution of such specified work in accordance with the notice given by it and the accompanying plans:

(5) Where a requirement has been imposed by the undertakers under paragraph (3) above the works or measures agreed upon or determined as aforesaid shall be executed by and at the expense of the Company but to the reasonable satisfaction of and under the superintendence of the undertakers (if after notice given to them by the Company of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the undertakers by or through such superintendence shall be paid by the Company:

(6) The undertakers may intimate by notice in writing to the Company within 14 days after the receipt by the undertakers of the notice given by the Company under paragraph (3) above their intention themselves to do and execute such works or measures and shall, following such intimation, do and execute those works with all reasonable despatch; and the Company shall on the completion thereof pay to the undertakers the reasonable expenses incurred by them in the execution of such works or measures as may be agreed on or determined as aforesaid:

(7) If the position of any of the apparatus is intended to be altered by the Company or the undertakers or if other apparatus is to be substituted therefor as provided for in paragraphs (3) and (5) above the undertakers may within 21 days of the receipt by them of the notice from the Company under paragraph (3) above require the Company to or may within the period referred to in paragraph (6) above notify the Company of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so intended to be altered or removed and in that event the undertakers shall pay to the Company or shall themselves bear the additional cost attributable to the substitution of such larger apparatus:

(8) The Company shall indemnify the undertakers against all claims, demands, costs, damages and expenses made against or recovered from or incurred by the undertakers by reason or in consequence of any damage done by the Company to any apparatus or of any interruption in the relevant services which may without the written authority of the undertakers be in any way occasioned either by reason of the execution by the Company of the work or by the acts or defaults (in, or in connection with such execution) of the Company:

(9) The undertakers shall give to the Company notice of any claim or demand made against them which in the opinion of the undertakers is a claim or demand for which the Company may be liable under paragraph (8) above and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company:

(10) Notwithstanding the stopping up of any road under the powers of section 6 (Temporary stoppage of roads) of this Order the undertakers may exercise the same rights of access to any apparatus as they enjoyed immediately prior to the enactment hereof:

(11) In exercising the said rights of access the undertakers shall not, so far as reasonably practicable, interrupt the execution, maintenance or use of any of the Company's works and the undertakers shall compensate the Company for any damage to such works occasioned by the exercise of the said rights:

(12) The undertakers shall if so requested by the Company furnish to the Company all information in their possession relative to the position and nature of any apparatus which in the opinion of the chief engineer of the undertakers might be affected by the work:

(13) Any difference between the Company and the undertakers in connection with any of the provisions of this section or with anything contained in this Order shall be determined by arbitration.

Arbitration.

11. Where under this Order any difference is to be referred to or settled by arbitration, the reference shall be to a single arbiter to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Saving for town and country planning. 1972 c. 52.

12. The Town and Country Planning (Scotland) Act 1972 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised by this Order:

S.I. 1981/830 (S. 86).

Provided that nothing in Article 3 of, and Class X in Schedule 1 to, the Town and Country Planning (General Development) (Scotland) Order 1981 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament, being an Act or Order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall apply with respect to the development authorised by this Order.

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CHAPTER xix

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