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STATUTORY INSTRUMENTS

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**1995 No. 519**

**The Barking Barrage Order 1995**

**PART II**

**WORKS PROVISIONS**

**Power to construct works and survey**

3.—(1) The Borough may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works shall be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections.

(3) In addition to any surveys required or authorised under any other provision of this Order the Borough shall survey and monitor the river in accordance with a scheme established by the Borough following consultation with the Port Authority, the River Authority, the Crown Estate Commissioners, the London Borough of Newham, Redbridge, the Railway Undertaker, English Nature and Thames Water, provided that a copy of such scheme and of the results of any survey or monitoring undertaken in accordance with such scheme shall be sent to those consulted.

(4) The Borough may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works, namely—

- (a) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter the course of, otherwise interfere with, non-navigable rivers, streams or watercourses;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (d) works for the benefit or protection of premises affected by the scheduled works, and
- (e) monitoring and surveying the river and works incidental thereto.

(5) Subject to paragraph (6), the Borough may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(6) Paragraph (5) shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out on land specified in columns (1) and (2) of Schedule 2 for the purpose specified in relation to that land in column (3) of the Schedule.

(7) Subject to section 5 of the Telecommunications Act 1984<sup>(1)</sup>, the Borough may install and maintain telecommunication apparatus and run telecommunications systems (such apparatus and systems having the meanings given by that Act, including the extended definition of telecommunication apparatus in Schedule 2 thereto) on or over land, whether or not a street, for the

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(1) 1984 c. 12.

purpose of telecommunication or of electrical communication between any place and any part of the authorised works or between different parts of those works.

(8) The Borough may within the limits of deviation alter, replace or re-lay temporarily or permanently any of the authorised works.

(9) Section 109 of the Water Resources Act 1991<sup>(2)</sup> shall apply to the construction of the authorised works or the alteration thereof only as provided by Part VII.

(10) Any authorised works constructed in accordance with the provisions of and under the authority of this Order which require a licence under the provisions of section 66(1) of the Act of 1968 shall be deemed to be works licensed by section 66(1) of the Act of 1968.

(11) Section 76 of the Act of 1968 shall not apply to the construction of the authorised works.

(12) Any deepening, dredging, scouring, clearing, improving of the river and removing of obstructions or projections which would require a licence under the provisions of section 73 of the Act of 1968 shall be deemed to be so licensed if undertaken by the Borough in accordance with the provisions of and under the authority of this Order.

(13) Section 9 of the Salmon and Fresh Water Fisheries Act 1975<sup>(3)</sup> shall not apply to the construction of the authorised works or to the alteration thereof.

(a) (14) (a) In this paragraph the “byelaws” means the Thames Water Land Drainage Byelaws 1981 or any re-enactment or amendment thereof and “byelaw” shall be interpreted accordingly and “operations” shall mean any dredging, clearance, scouring, digging or other works or operation.

(b) Any operations authorised by this Order which would require a licence under the provisions of the byelaws shall be deemed to have received the consent of the River Authority in accordance with those byelaws provided that whenever operations are proposed on the river which apart from byelaw 33 would require the River Authority’s consent under byelaw 6 the person intending such operations shall except in cases of emergency notify the River Authority at least 7 days before such operations of details of the operations concerned.

#### **Power to deviate**

4.—(1) In the execution of the scheduled works, or any part thereof, the Borough may deviate laterally from the lines or situations thereof shown on the works plan to any extent within the limits of deviation and may deviate vertically from the levels shown on the sections to any extent upwards or downwards:

Provided that notwithstanding anything in this article the barrage shall be so constructed that—

- (a) the unobstructed opening between the 2 piers, as shown on the works plan and sections, on either side of the navigable channel of the river is not less than 9 metres wide;
- (b) the headroom for vessels passing between the said 2 piers is unlimited;
- (c) the cill between the said 2 piers, as shown on the sections, is set at 0.5 metres below Ordnance Datum (Newlyn) or at such other level as may be agreed between the Borough and the Port Authority to be the level of the bed of the river at that point immediately before the construction of the barrage is commenced;
- (d) the level of the crest to the weir, as shown on the works plan and sections, is set at 2 metres above Ordnance Datum (Newlyn) with a tolerance of plus or minus 10 millimetres; and
- (e) the width of the crest of the weir, as shown on the works plan, is not less than 16 metres.

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(2) 1991 c. 57.

(3) 1975 c. 51.

(2) Nothing in paragraph (4) or paragraph (5) of article 3 shall authorise the Borough to execute any part of the scheduled works in contravention of the restrictions imposed by the proviso to the foregoing paragraph of this article.

### **Power to make subsidiary works**

5.—(1) Subject to the provisions of this Order the Borough may from time to time within the limits of deviation or on any land vested in the Borough at the date of this Order or to be acquired or used by the Borough for the purposes of this Order, erect, construct and maintain, whether temporarily or permanently, all such works and conveniences as may be requisite or expedient for the purposes of, or in connection with, the construction, maintenance and use of the works authorised by article 3.

(2) On the completion of any part of the works authorised by article 3 the Borough shall remove all temporary works placed by it under the powers of this article.

(3) The Borough may, on any lands abutting on lands within the limits of deviation, execute or do by agreement with the owners and occupiers of the first mentioned lands any of the works or things referred to in paragraph (1) and any works necessary or convenient for the purpose of providing or facilitating access to or from all the said lands or for preserving the amenities thereof.

(4) In the exercise of the powers contained in this Order, the Borough shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any loss or damage sustained by them by reason of the exercise by the Borough of such powers and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

### **Subsidiary powers to the Borough**

6.—(1) Subject to the provisions of this Order and within the limits of deviation or on any land vested in the Borough at the date this Order comes into force or to be acquired or used by the Borough for the purposes of this Order the Borough, in connection with and for the purposes of the authorised works, may—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, river walls, bridges and footpaths;
- (b) make, provide and maintain all necessary or convenient—
  - (i) buildings, walls, banks, embankments, borrow pits, quays, slipways, pavings, yards, moorings;
  - (ii) boat-hoists, rollers and other facilities for transporting boats;
  - (iii) fish ladders or passes or other apparatus for facilitating the passage of fish; and
  - (iv) piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, towing paths, footpaths and landscaping works, mains, pipes, cables, wires, machinery works and appliances;
- (c) dispose of spoil or other material excavated in the execution of the authorised works;
- (d) execute any works for the protection of any adjoining lands or buildings;
- (e) remove, alter, divert or stop up any watercourse (except the river) or sewer (not being a watercourse), the Borough providing a proper substitute before interrupting the flow of water or sewage in any such watercourse or sewer;

- (f) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, sludge, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928(4)).

(2) In the exercise of the powers contained in this Order, the Borough shall cause as little detriment and inconvenience to any person as circumstances admit and shall pay compensation to all persons for any loss or damage sustained by them by reason of the exercise by the Borough of such powers and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

### **Power to Borough to dredge**

7.—(1) Subject to any necessary consents, the Borough may from time to time both during and after the construction of the scheduled works, deepen, dredge and improve, and remove obstructions from the bed, foreshore and banks of the upstream river—

- (a) for the purposes of or in connection with the construction, operation, maintenance, alteration, extension, enlargement, replacement, repair, renewal or removal of the scheduled works; or
- (b) for the purpose of facilitating the navigation of vessels; or
- (c) for the purpose of ensuring the water level, upstream of the barrage, is always higher than the level of the river bed.

(2) The powers granted by this article, in so far as they affect dredging on land within the boundaries of Redbridge, shall only be exercisable with the prior written consent of Redbridge, such consent not to be unreasonably withheld.

### **Cables, pipes or wires under or over tidal water or tidal lands**

8. Notwithstanding anything in this Order any cables, pipes or wires to be laid or placed by the Borough under the powers contained in this Order (other than those laid or placed within or attached to the structure of the barrage) under or over any tidal waters or tidal lands below the mean high water level of spring tides shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Port Authority and River Authority may require.

### **Works deemed to be constructed under an impounding licence**

9. The barrage shall be deemed to have been constructed under a licence under Chapter II of Part II of the Water Resources Act 1991 granted by the River Authority and, except as may be otherwise provided by this Order, the provisions of the said Act of 1991 relating to such licences shall apply to the licence deemed by this article to have been granted under that Chapter as they apply to those so granted.

### **River not to be a reservoir**

10. Notwithstanding the provisions of subsection (2) of section 1 of the Reservoirs Act 1975(5), it is hereby declared that so much of the river as is impounded by the barrage is not, by virtue of the retention of water by means of the barrage, to be taken to be a reservoir for the purposes of that Act or for the purposes of the Reservoirs (Safety Provisions) Act 1930(6).

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(4) 1928 c. 32.  
(5) 1975 c. 23.  
(6) 1930 c. 51.

### **Agreements with owners of land and others for construction of works**

**11.**—(1) The Borough may enter into and carry into effect agreements or arrangements with the Port Authority and River Authority or the owners of, or other persons interested in, any land in or through which any of the authorised works are or may be constructed, or the drainage of which may be affected by the construction of any of the authorised works, for or with respect to the doing of anything which may be rendered necessary or convenient by reason of the exercise of the powers contained in this Order.

(2) Any such agreement may provide for—

- (a) the payment by the Borough of or the making of contributions by it towards the cost incurred, or to be incurred, by the Port Authority and the River Authority or any such owners or other persons in or in connection with the doing of any such thing; or
- (b) the payment by the Borough of compensation for any injury suffered or loss incurred by the Port Authority or River Authority or any such owners or other persons by reason or in consequence of the execution by the Borough of the authorised works, or entry upon land.

### **Repair of river walls**

**12.** Any river wall or portion thereof made, diverted or altered under this Order shall, when completed, unless otherwise agreed, be maintained by and at the expense of the Borough.

### **Temporary closing of River Roding in connection with works**

**13.**—(1) Notwithstanding anything in any other enactment or in any rule of law, the Borough may temporarily close the river between the Northern A13 bridge and Four Gates bridge, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

(2) The Borough shall not exercise the powers conferred by paragraph (1) without the consent of the Port Authority and, in the exercise of those powers—

- (a) the Borough shall so execute or do such works or things as to ensure that at any time no more of the river is so closed than is reasonably necessary in all the circumstances; and
- (b) if it becomes necessary to close the river completely to navigation, the Borough shall use its best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the river and that the minimum interference is caused to persons who may be using or intending to use the river for the purposes of trade or business.

(3) Neither the Borough, the Port Authority nor the Crown shall be liable for any costs, damages or expenses whatsoever incurred by any person (save as provided in Part VI) as a result, directly or indirectly, of any closure of the river under paragraph (1).

### **Power to use bed and banks of watercourses**

**14.**—(1) Subject to the provisions of this Order but without prejudice to its powers under article 21, 23, 24 or 25, the Borough may for the purposes of the authorised works enter upon and use so much of the bed or banks of any watercourse as is within the limits of deviation or the limits of land to be acquired under the powers of this Order and as may be required for those purposes, and they may also for the purposes of executing and placing temporary works and conveniences in connection with the works authorised by article 3 or 5 occupy and use temporarily so much of such bed and banks within the said limits as may be required for those purposes or any of them.

(2) The Borough shall, not less than 14 days before entering upon and using the bed or banks of any watercourse, give notice of its intention to the Port Authority, River Authority and the occupier

of the land comprising such bed or banks and shall pay compensation to all persons having an interest in that land for any damage sustained by them or liability or loss to which they may become subject in respect of that land by reason of the exercise of the powers conferred by this article, and any question as to the amount of the compensation to be so paid shall be determined by the tribunal.

### **Diversion of flow of water**

**15.** The Borough may by means of the authorised works divert, intercept, stop up or otherwise interfere with the waters of, or the flow of water in, the river which may be intercepted by those works.

### **Power to take, pump, impound and discharge water**

**16.—(1)** Except as provided in paragraphs (2) and (3), notwithstanding anything contained in any other enactment, the Borough may, for the purposes of or in connection with the exercise of its functions under this Order, take, impound and use water from, and discharge water into, the river, and may pump any water required by them from or into the river or pump any water found by them into the river or into any sewer, drain or watercourse and for any of those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and make any convenient connections with the river or (as the case may be) with a sewer, drain or watercourse.

(2) The Borough shall not, under the powers of this article—

- (a) discharge any water into any sewer or drain except with the consent (which shall not be unreasonably withheld) of Thames Water or (in the case of a private sewer or drain) the owner and subject to such terms and conditions as Thames Water or the owner, as the case may be, may reasonably impose,
- (b) make any opening into such sewer or drain save in accordance with plans reasonably approved by and under the superintendence (if given) of Thames Water or the owner, as the case may be;
- (c) discharge any water into the river except with the consent (which shall not be unreasonably withheld) of the Port Authority and subject to such terms and conditions as the Port Authority may reasonably impose.

(3) Nothing in this article shall exempt the Borough from the provisions of the Prevention of Oil Pollution Act 1971(7).

(4) Nothing in this article shall relieve the Borough from the requirements of the Water Resources Act 1991.

(5) Sections 85, 86 and 87 of the Water Resources Act 1991 shall apply to, or to the consequences of, a discharge under the powers of this article into any controlled waters within the meaning given by section 104 of that Act as if this article were excluded from the reference to any local statutory provision mentioned in section 88(1)(f) of that Act.

(6) In this article reference to the taking or discharge of water includes the taking or discharge of water by pumping.

### **Deposits in river**

**17.** Except so far as may be unavoidable in the construction of the authorised works, or in the exercise of the powers of article 7, the Borough shall not, without the consent of the River Authority and Port Authority (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the river any gravel, soil or other materials (including in particular any spoil or material excavated whether or not from the river) in the carrying out of the authorised works.

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(7) 1971 c. 60.

### **Provision against danger to navigation**

**18.**—(1) In case of injury to, or destruction or decay of, a tidal work, or any part thereof, the Borough shall as soon as reasonably practicable notify the Port Authority and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Port Authority shall from time to time direct.

(2) If the Borough fails to notify the Port Authority as required by this article or to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Survey of tidal works**

**19.** The Port Authority may at any time order a survey and examination of a tidal work constructed by the Borough, or of the site upon which it is proposed to construct the tidal work, and any expenditure incurred by the Port Authority in any such survey and examination shall be recoverable from the Borough.

### **Lights on tidal works**

**20.**—(1) The Borough shall at or near a tidal work, during the whole of the construction, alteration, replacement or re-laying thereof, exhibit such lights, lay down such buoys and take such other steps for the prevention of danger to navigation as the Port Authority shall from time to time direct.

(2) After the completion of a tidal work, the Borough shall exhibit such lights, lay down such buoys and take such other steps at or near such tidal work for the prevention of danger to navigation as the Port Authority shall from time to time direct.

(3) If the Borough without reasonable excuse fails to comply in any respect with a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.