
STATUTORY INSTRUMENTS

1995 No. 519

The Barking Barrage Order 1995

PART VI

PROVISIONS FOR THE PROTECTION OF THE PORT AUTHORITY

Works in upstream river

47.—(1) For the purposes of this article “plans” means outline design and construction drawings and such specifications and other appropriate documents (including so far as is reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Port Authority an understanding of the Borough’s intentions in connection with constructional operations which will or may have a significant effect on navigation in, or the flow or regime of, the river and, where applicable such relevant hydraulic information about the river, including that obtained from models, as may be available to the Borough and is not already in the possession of the Port Authority.

(2) Not later than 28 days before—

- (a) starting to carry out any tidal works; or
- (b) exercising any of the powers of article 7,

the Borough shall submit to the Port Authority plans thereof and such further particulars as may be available to the Borough and as the Port Authority may reasonably require and in carrying out such works or in exercising such powers, the Borough shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal works), including the carrying out of such works by the Borough at their own expense, as may be specified by the Port Authority for the protection of traffic in, or the flow or regime of, the river:

Provided that any such modifications or conditions as aforesaid shall be notified by the Port Authority to the Borough within 28 days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

(3) The Borough shall pay the Port Authority’s reasonable costs and expenses for examining the plans and for considering the Borough’s proposals prior to the making of this Order.

(4) For the purpose of securing that traffic in, and the flow or regime of, the river shall not be interfered with more than is reasonably necessary, tidal works shall be maintained to the reasonable satisfaction of the Port Authority.

(5) The Borough shall, upon completion of any part of a tidal work, remove as soon as is practicable any temporary works and materials for temporary works carried out or placed only for the purposes of that part of the tidal work, and shall make good the site thereof to the reasonable satisfaction of the Port Authority.

Facilities for navigation

48.—(1) The Borough shall provide at the barrage, or afford reasonable facilities thereat, for the Port Authority to provide thereat, from time to time such navigational lights, signals, or other

apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction and use of the scheduled works, and the Borough shall repay to the Port Authority any costs reasonably incurred by the Port Authority in connection therewith or in connection with any information given to, and any surveillance, co-ordination and regulation of, river traffic which becomes reasonably necessary by reason of the construction of a tidal work or of the exercise or prospective exercise by the Borough of their powers to close the river or any part thereof to navigation under article 13 or to close the barrage gates under article 33.

(2) The Borough shall repay to the Port Authority any costs reasonably incurred by the Port Authority in connection with any information given to, and surveillance, co-ordination and regulation of, river traffic which becomes reasonably necessary by reason of the actual or prospective temporary prohibition, restriction or regulation of the use and navigation of the upstream river or any part thereof under article 43.

Details to be submitted to Port Authority

49. On completion of the construction of the scheduled works the Borough shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and cross-sections on a scale of not less than 1 in 100 showing the situation and levels of those works at that time.

Survey of river bed

50.—(1) Before the construction of the scheduled works is commenced, the Port Authority in conjunction with the Borough shall carry out a survey of such parts of the river as are relevant for the purpose of establishing the condition of the river at that time.

(2) The Borough shall pay to the Port Authority such reasonable costs incurred by the Port Authority in carrying out—

- (a) the survey under this article; and
- (b) any surveys of the river required after the construction of the scheduled works has been completed to ascertain the effect of the scheduled works on the river,

as would not otherwise have been incurred.

(3) The Port Authority will make available to the Borough, at reasonable charge, the results of the survey carried out under this article.

General protection

51.—(1) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Port Authority or alter or diminish any power, authority or jurisdiction vested in the Port Authority at the commencement of this Order.

(2) The exercise in under or over the river by the Borough of any function contained in this Order shall be subject to any enactment relating to or made by the Port Authority and the exercise by the Port Authority or its harbour master of any powers and functions conferred on it or him by or under any enactment save as may be specifically provided to the contrary in this Order.

Further protection of Port Authority

52.—(1) Compensation shall be payable to the Port Authority in respect of any authorised works in, under or over land below the mean high water mark and any rights acquired in connection therewith as if the Borough had been required to obtain a licence for those authorised works under section 66 (licensing of works) of the Act of 1968 and to pay consideration therefor determined in

accordance with the provisions of section 67 (consideration for licence) of the Act of 1968 and the Port Authority may recover from the Borough the costs incurred by them in connection with the determination of such compensation.

(2) If it is agreed between the Borough and the Port Authority after taking into account any relevant data or circumstances, or in default of agreement it is determined in pursuance of a reference by the Port Authority under article 80, that—

- (a) any part of the river has silted up or has been subjected to scouring;
- (b) such silting up or scouring is silting up or scouring to which the provisions of this paragraph apply;
- (c) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such silting up or scouring should be removed or, as the case may be, made good; and
- (d) any other necessary consents have been obtained,

the Borough shall pay to the Port Authority (in the manner set out in paragraph (5)), any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the silting up or in making good the scouring, in so far as it is attributable to a tidal work.

(3) The provisions of paragraph (2) apply in relation to any silting up or scouring which is wholly or partly attributable to a tidal work during the period of the execution of those works and thereafter for a period of 10 years from the relevant date and shall then cease to apply in relation to any silting up or scouring which is wholly or partly attributable to the tidal work in question.

(4) In paragraph (3) “the relevant date” means, in relation to the scheduled works and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Borough that the works are substantially complete and the barrage gates are capable of being closed.

(5) The Borough shall, if so required by the Port Authority, make payments to the Port Authority on account of any sum required to be paid in pursuance of paragraph (2), being payments of such amounts and made at such times as may be agreed between the Borough and the Port Authority or in default of agreement as may be determined by an arbitrator to be reasonable for meeting so much of the cost to the Port Authority in dredging the river or causing the river to be dredged, or in making good or in causing to be made good scouring to which the river has been subjected.

Power of the Borough to make good

53.—(1) The Borough shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses not otherwise provided for in this Order and which may be reasonably incurred by or occasioned to the Port Authority—

- (a) by reason of the construction, alteration or repair of the authorised works or the failure thereof; or
- (b) by reason of any act or omission of the Borough or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction, alteration or repair of the authorised works.

and the Borough shall indemnify the Port Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the Port Authority on behalf of the Borough or done by the Borough, any persons in its employ, or of its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority or in a manner approved by the Port Authority or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the

Port Authority or its duly authorised representative or of any person in its employ or of its contractors or agents) excuse the Borough from liability under the provisions of this article.

(2) The Port Authority shall give to the Borough reasonable notice of any claim or demand as aforesaid, and no settlement or compromise thereof shall be made without the prior consent of the Borough.

(3) If it is reasonably necessary as a result directly or indirectly of a tidal work—

- (a) to alter, remove, resite or reinstate any existing moorings;
- (b) to lay down and maintain or remove any new moorings; or
- (c) to construct and maintain a lay-by berth for vessels,

the Port Authority may recover from the Borough the reasonable cost to the Port Authority of carrying out those operations.

- (a) (4) (a) If a tidal work is abandoned or suffered to fall into decay, the Port Authority may by notice in writing require the Borough at its own expense to exercise the option either of repairing and restoring the work or any part thereof, or of removing the work and restoring the site thereof to its former condition, to such an extent and within such limits as the Port Authority may reasonably require.
- (b) Where a work consisting partly of a tidal work and partly of works on land above the mean high-water level of spring tides is abandoned or suffered to fall into decay and that part of the work on land above the level of mean high-water level of spring tides is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Port Authority may include that part of the work, or any portion thereof, in any notice under this paragraph.
- (c) If on the expiration of such reasonable period as may be specified in a notice served under this paragraph upon the Borough it has failed to comply with the requirements of the notice, the Port Authority may itself exercise the option and execute the works specified in the notice and any expenditure incurred by it so doing shall be recoverable from the Borough as a simple contract debt.

Byelaws of the Port Authority

54. The powers of the Port Authority under section 162 (Thames byelaws) of the Act of 1968 shall be deemed to include a power to make byelaws, after consultation with the Borough, for or in connection with the management, regulation, direction and control of vessels passing or waiting to pass through the barrage:

Provided that for the purposes of byelaws made by virtue of this article the confirming authority under the said section 162 shall be the Secretary of State.

Removal of piles, stumps and other obstructions

55.—(1) Any pile, stump or other obstruction which becomes exposed in consequence of a tidal work (other than a pile, stump or other obstruction situated on the site of any permanent works or forming part of the railway bridges over the upstream river) shall be removed from the river by the Borough or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the river as the Port Authority may reasonably direct.

(2) If the Borough fail to remove from the river, or to cut off as aforesaid, any such pile, stump or other obstruction within 28 days of receipt of written notice from the Port Authority requiring its removal or cutting off, the Port Authority may carry out the removal or cutting off and recover the costs of so doing from the Borough.

(3) Paragraphs (1) and (2) shall be subject to the provisions of article 75.

Free access

56. The Port Authority's vessels and those of its agents shall be entitled to pass through the barrage and use the upstream river free of charge in the exercise of the Port Authority's powers and duties.