

1990 No. 1659

HARBOURS, DOCKS, PIERS AND FERRIES

**The Portsmouth Flathouse Quay Harbour Revision
Order 1990**

Made - - - - - 27th July 1990

Coming into force 28th July 1990

Whereas the making of this Order is not opposed:

Now therefore the Secretary of State for Transport (being the appropriate Minister under section 14(7) of the Harbours Act 1964(a) for the purpose of making this Order) in exercise of the powers conferred by the said section 14 and now vested in him(b), and of all other powers enabling him in that behalf, and on the application of the Portsmouth City Council, hereby makes the following Order:—

Citation and Commencement

1. This Order may be cited as the Portsmouth Flathouse Quay Harbour Revision Order 1990 and shall come into force on 28th July 1990.

Interpretation

2.—(1) In this Order

“the Act of 1847” means the Harbours, Docks, and Piers Clauses Act 1847(c);

“the authorised works” means the works authorised by this Order or any part of those works and where any part of those works remain uncompleted, includes the site thereof;

“the Council” means the Portsmouth City Council;

“the deposited plan” means the plan prepared in duplicate signed by an Assistant Secretary in the Department of Transport and marked “Plan and Sections referred to in the Portsmouth Flathouse Quay Revision Order 1990” of which one is deposited at the offices of the Department of Transport and one at the offices of the City Secretary and Solicitor of the Council;

“enactment” means any enactment whether public general or local and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the level of high water” means the level of mean high-water springs;

“the limits of deviation” means the limits of deviation shown on the deposited plan;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

(a) 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14.

(b) See section 57(1) of the Harbours Act 1964 and S.I. 1981/238.

(c) 1847 c.27.

“Queen’s Harbour Master” means the person for the time being appointed to be Queen’s Harbour Master of the Dockyard Port of Portsmouth under the Dockyard Ports Regulation Act 1865(a);

“tidal work” means a work on, under or over any part of the seashore lying below mean high water springs;

“vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

(2) All distances and lengths stated in any description of works powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance and length.

Incorporation of the Act of 1847

3.—(1) The Act of 1847 (except sections 6 to 13, 16 to 20, 25 to 27, 31, 48, 49, 50, 67, 79 to 82, 84 to 90, 95, 97 and 98 and so much of the proviso to section 83 as follows the words “the special Act”), so far as the same is applicable for the purposes of and is not inconsistent with, or varied by, the provisions of this Order is hereby incorporated with this Order:

Provided that—

- (a) section 15 of the Act of 1847 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (b) section 23 shall have effect as if the words “provided that no such lease be granted for a longer term than three years” were omitted;
- (c) section 34 of the Act of 1847 shall have effect as if after the word “may” there were inserted the words “(producing if so required a duly authenticated document showing his authority)”;
- (d) section 63 of the Act of 1847 shall have effect as if the words “and a further sum of twenty shillings for every hour that such vessel shall remain within the limits aforesaid, after a reasonable time for removing the same has expired after such requisition” were omitted; and
- (e) section 69 of the Act of 1847 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”;

(2) In the construction of the Act of 1847 as so incorporated the expression “the special Act” shall mean this Order and the expression “vessel” shall have the meaning assigned to it by Article 2(1) of this Order.

(3)(a) For the purposes of section 83 of the Act of 1847 as so incorporated sections 236 to 238 of the Local Government Act 1972(b) shall apply to this Order as if it were such an enactment as is referred to in the said section 236, and:—

- (i) for the purposes of the said section 236 the confirming authority for byelaws made under the said section 83 shall be the Secretary of State for Transport; and
- (ii) the said section 236 shall have effect as if in subsection (7) thereof after the word “confirm” where it firstly occurs in the sub-section the words “with or without modification” were inserted.

(b) If the Secretary of State, on considering byelaws relating to the harbour made by the Council and submitted under the said section 236 as having effect in accordance with paragraph (a) above, proposes to make a modification which appears to him to be substantial, he shall inform the Council and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment

(a) 1865 c.125.

(b) 1972 c.70.

upon, the proposed modification by the Council and by other persons who have been informed of it.

Power to Construct etc Works

4.—(1) Subject to the provisions of this Order, the Council may, when they have acquired the necessary lands or obtained sufficient interests therein, make and maintain within the limits of deviation the following works in the City of Portsmouth: A quay wall on the seaward side of the existing Flathouse Quay commencing by a junction with Berth 2 at its north-western end, passing in a north-westerly direction for a distance of 14 metres on a seaward projection of the line of the seaward face of Berth 2, then turning south-westwards to a line parallel to the existing face of Berth 1 at a distance of 10 metres from that face and passing on that line for a distance of 188 metres, then turning south-south-eastwards and terminating by a junction with the existing face of Berth 1 at the boundary of Flathouse Quay with HM Naval Base, Portsmouth.

(2) The Council may demolish and remove the disused triangular dolphin situated 90 metres seaward of Flathouse Quay Berth One at Latitude 1° 05' 29"W Longitude 50° 48' 32"N.

(3) The Council may within the limits of deviation extend, enlarge, alter, replace or relay the authorised works.

(4) For the purposes of this Article and Articles 5, 6 and 7, the Council may authorise any person, company or undertaking to carry out the authorised works, as agent of the Council or otherwise.

Power to Deviate

5. In constructing the authorised works the Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation.

Further Powers as to Works

6. Subject to the provisions of this Order, the Council may by means of the authorised works enclose and reclaim from the foreshore and bed of the sea, and may hold and use as part of Flathouse Quay so much of the foreshore and bed of the sea as is situate within the limits of deviation and is required for, or in connection with, the authorised works.

Subsidiary Works

7. Subject to the provisions of this Order, the Council may in connection with the authorised works and within the limits of deviation, construct, erect, lay down, place, maintain, work or use all necessary or convenient bridges, abutments, booms, pontoons, fenders, tanks, pumps, conduits, pipes, wires, mains, cables, rails, signals, conveyors, cranes, lifts, hoists, drops, weighbridges, stairs, stages, platforms, catwalks, landing places, dolphins, buoys, moorings, beacons, approaches, buildings, sheds, offices, depots, roads, walls, fences, gates, equipment, machinery and appliances and such other works and apparatus as they think fit:

Provided that electrical works or equipment constructed, erected, laid down or placed or maintained, worked or used pursuant to the powers conferred by this article shall be so constructed, erected, laid down or placed, and so maintained, worked or used, that any electricity generated or conveyed by any such works or equipment or used therein or in connection therewith does not cause interference (whether by induction or otherwise) with any telecommunications apparatus or with telecommunication by means of any such apparatus.

Directions and Jurisdiction of Harbour Master

8.—(1) Subject to paragraph (2) below the limits within which the powers of the Harbour Master of the Council may be exercised under and subject to the Act of 1847 as incorporated with this Order and all other powers enabling him in that behalf shall extend to a distance of one hundred metres in every direction from the authorised works.

(2) The powers conferred by paragraph (1) above shall be limited to vessels going to, moored at or departing from the authorised works.

(3) Subject to the provisions of Article 3 of this Order section 52 of the Act of 1847 in its application to the Council and the Harbour Master shall extend to empower the Harbour Master to give directions prohibiting the mooring of vessels in or near to any approach to the works.

Recovery of Rates in Respect of Vessels

9. In addition to the remedy given by section 44 of the Act of 1847 as incorporated with this Order and whether the demand which may be made under that section has been made or not the Council may recover any rates to which that section applies as a debt in any court of competent jurisdiction.

Harbour Master may Prevent Sailing of Vessels

10. The Harbour Master may prevent the removal or sailing from the authorised works of any vessel until evidence has been produced to him of the payment of any ship, passenger and goods dues and other charges payable in respect of the vessel or of passengers thereon or of the goods imported or exported therein.

Power to Dredge etc

11.—(1) The Council may with the consent of the Queen's Harbour Master enter upon and from time to time dredge, scour, deepen and improve the bed, shores and channels of the sea adjoining or near to the authorised works for the purpose of affording uninterrupted means of access thereto or the accommodation of vessels thereat.

(2) Without prejudice to the generality of paragraph (1) of this Article, the Council may exercise the powers of that paragraph so as to ensure a depth of 7 metres below admiralty chart datum in the vicinity of, and in the approaches to, the authorised works.

(3) All chalk, gravel, rock and other materials dredged up or removed by the Council in the exercise of the powers of this Article shall be the property of the Council and they may use the same, or any part thereof, or they may sell, or otherwise dispose of or remove or deposit the same, as they think fit:

Provided that no such materials shall be laid down or deposited in any place below the level of high water—

- (a) otherwise than in such a position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State; and
- (b) without the consent in writing of the Queen's Harbour Master having been first obtained.

(4) The powers of the Council under this Article shall be exercisable subject to the provisions of Article 22 (Crown Rights) and Article 23 (saving rights of Queen's Harbour Master) of this Order and in particular and without prejudice to that general limitation, any consent given to the exercise of such powers by the Crown Estate Commissioners on behalf of Her Majesty may be given subject to such restrictions and conditions, including the payment by the Council to the Crown Estate Commissioners of royalties, rents or sums of money in respect of materials raised from any place below the level of high water and sold by the Council under this Article or in respect of any place below the level of high water upon which materials may be deposited, as may be fixed by the Crown Estate Commissioners.

Fine for Obstructing Works

12. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of the authorised works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall for every such offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Tidal Works not to be Executed without Approval of Secretary of State

13.—(1) A tidal work shall not be constructed, altered, enlarged, replaced, relaid or extended except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, enlarged, replaced, relaid or extended in contravention of this Article or of any condition or restriction imposed under this Article—

(a) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition and if on the expiration of thirty days from the date when the notice is served upon the Council they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice or

(b) if it appears to the Secretary of State urgently necessary so to do he may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council as a simple contract debt.

Provision against Danger to Navigation

14.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Council shall as soon as reasonably practicable notify Trinity House and the Queen's Harbour Master and shall lay down such buoys exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If the Council shall fail to notify Trinity House or the Queen's Harbour Master as required by this Article or to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of Works Abandoned or Decayed

15.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof or to remove the work and restore the site thereof to its former condition to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water 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 Secretary of State may include that part of the work or any portion thereof in any notice under this Article.

(3) If on the expiration of thirty days from the date when a notice under this Article is served upon the Council they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council as a simple contract debt.

Survey of Tidal Works

16. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Council as a simple contract debt.

Permanent Lights on Tidal Works

17.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights if any and take such other

steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine:

Provided that it shall be a defence for the Council to prove that all due diligence was used to secure compliance with any such direction.

Lights on Tidal Works during Construction

18.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relying or extension thereof exhibit every night from sunset to sunrise such lights if any and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this Article they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine:

Provided that it shall be a defence for the Council to prove that all due diligence was used to secure compliance with any such direction.

Recovery of Fines

19.—(1) All fines and forfeitures recoverable under the provisions of the Act of 1847 as incorporated with this Order or under any byelaw made in pursuance of section 83 of the Act of 1847 as so incorporated may be recovered in a summary manner.

(2) Any costs or expenses recoverable as aforesaid may be recovered summarily as civil debts.

Power to Lease etc

20. The Council may, for harbour purposes, lease or grant the use or occupation of, or any right or interest in, or over, any lands, works, buildings, equipment or other property forming part of the Flathouse Quay or the authorised works for such period or periods and on such terms and conditions as shall be agreed between the Council and the person taking the same.

Further Extension of Section 86 of Portsmouth Corporation Act 1959

21. Section 86 (Powers with respect to disposal of wrecks) of the Portsmouth Corporation Act 1959(a) as having effect in accordance with Article 21 of the Portsmouth Mile End Quay Revision Order of 1966(b), Article 21 of the Portsmouth Mile End Quay Revision Order 1973(c) and Article 15 of the Portsmouth Mile End Quay Revision Order 1988(d) shall have effect as if the references to any approach to the Flathouse Wharf and Quay in subsections (1) and (7) of that section included a reference to any approach to the authorised works.

Crown Rights

22. Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular nothing herein contained authorises the Council to take use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners on behalf of Her Majesty first had and obtained for that purpose.

(a) 1959 c.xlv.

(b) S.I. 1966/982.

(c) S.I. 1973/2135.

(d) S.I. 1988/1519.

Saving Rights of Queen's Harbour Master

23. Nothing in this Order shall take away, alter, prejudice or affect the jurisdiction or any rights, powers, authorities or privileges of the Queen's Harbour Master.

24. All the costs, charges and expenses preliminary to and of and incidental to the preparation of and the application for and the obtaining of this Order or otherwise in relation thereto (other than those which any person is lawfully ordered to pay by the Secretary of State for Transport or a joint Committee of both Houses of Parliament or any costs, charges and expenses incurred in opposing the Order) shall be paid by the Council out of the general fund or out of moneys to be borrowed under this Order for that purpose.

Inquiries by Secretary of State

25. The Secretary of State may cause such local inquiries to be held as he may consider necessary for the purposes of any of his functions under this Order, and subsections (2) to (5) inclusive of section 250 of the Local Government Act 1972 shall apply to any such inquiry.

Signed by authority of the Secretary of State for Transport

27th July 1990

H. B. Wenban-Smith
An Under Secretary in the
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Portsmouth City Council as the harbour authority for the Flathouse Quay to construct works extending the Quay and confers on the Harbour Master powers to control vessels using the Quay. The Order also authorises the Council, to dredge the channel giving access to the works and permits the Council to lease the works once completed. The Applicant for the Order is Portsmouth City Council.