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STATUTORY INSTRUMENTS

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**1995 No. 519**

**The Barking Barrage Order 1995**

**PART VII**

**PROVISIONS FOR THE PROTECTION OF THE RIVER AUTHORITY**

**Interpretation**

**57.**—(1) For the protection of the River Authority the provisions of this Part shall, unless otherwise agreed in writing between the Borough and the River Authority, have effect.

(2) In this Part—

“construction” includes execution, placing and altering and in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water (including sea water);

“the fishery” means fish in, or migrating to or from, the River Thames or the river and the spawn, habitat or food of such fish;

“fish pass” is a fish pass or passes incorporated in the barrage suitable for the upstream and downstream passage of migratory fish and eels;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under or over a watercourse or is otherwise likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse;
- (d) affect the conservation, distribution or use of water resources contained in the aquifer lying beneath the Borough; or
- (e) affect the ability of the River Authority to fulfil its statutory duties in relation to the environment or recreation; and “watercourse” has the meaning given to it in section 72 of the Land Drainage Act 1991.

**Approval of plans**

**58.**—(1) Before beginning to construct any specified work, the Borough shall submit to the River Authority plans of the work and such further particulars available to them as the River Authority may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the River Authority, or settled by arbitration.

- (3) Any approval of the River Authority required under this article—
- (a) shall not be unreasonably withheld;
  - (b) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within 2 months of the submission of plans for approval;
  - (c) may be given subject to such reasonable requirements as the River Authority may impose for the protection of any drainage work or the fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

### **Conditions relating to works**

**59.**—(1) Without prejudice to the generality of paragraph (3) of article 58, the requirements which the River Authority may impose under that paragraph include conditions requiring the Borough at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work. Such conditions may address amongst other things the matters referred to in byelaw 4 of the Thames Water Authority Land Drainage Byelaws 1981.

(2) Any specified work, and all protective works required by the River Authority under article 58, shall be constructed to the reasonable satisfaction of the River Authority and the River Authority shall be entitled by its officer to watch and inspect the construction of such works.

(3) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall, subject to article 75, be made good by the Borough to the reasonable satisfaction of the River Authority and, if the Borough fails to do so, the River Authority may make good the same and, subject to article 75, recover from the Borough the expense reasonably incurred by the River Authority in so doing.

### **Fish passes**

**60.**—(1) Without prejudice to the other provisions of this Part, the Borough shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during or after the construction of any specified work, including the construction of a fish pass to the reasonable satisfaction of the River Authority, which the Borough shall maintain and monitor at its own expense and shall keep the same in an efficient state while the barrage is in place and shall ensure that the operation of the barrage facilitates the efficiency of the fish pass.

(2) If by reason of the construction of any specified work the fishery is damaged, such damage shall, subject to article 75, be made good by the Borough to the reasonable satisfaction of the River Authority and, if the Borough fails to do so, the River Authority may make good the same and, subject to article 75, recover from the Borough the expense reasonably incurred by the River Authority in so doing.

### **Indemnities**

**61.**—(1) The Borough shall indemnify the River Authority in respect of all costs, charges and expenses which the River Authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under article 58, including work on the Borough's proposals prior to the making of this Order; or

(b) in the inspection of the construction of the specified works or any protective works required by the River Authority under this Part.

(2) Without prejudice to the other provisions of this article, the Borough shall indemnify the River Authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the River Authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses; or
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in groundwater,

which may wholly or in part be caused by, or result from, or may directly or indirectly result from, the construction of any of the authorised works or any act or omission of the Borough, its contractors, agents, workmen or servants whilst engaged upon any such work:

Provided that the foregoing provisions of this paragraph shall not apply in relation to any injury or detriment sustained after the period of 10 years from the date on which it is certified by the Engineer of the Borough that the scheduled works are substantially complete and the barrage gates are capable of being closed.

(3) The River Authority shall give to the Borough reasonable notice of any such claim or demand and no compromise or settlement thereof shall be made without the agreement of the Borough which agreement shall not be unreasonably withheld.

### **Liability of the Borough**

**62.** The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the River Authority, or to their satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Borough from any liability under the provisions of article 61.

### **Deemed consents**

**63.** For the purposes of section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879(1) and section 109 of the Water Resources Act 1991 (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the River Authority under this Part with respect to such construction shall be deemed also to constitute a consent or approval under those sections.

### **Powers of the River Authority**

**64.** Except as otherwise provided by this Order, nothing in this Order shall prejudice or affect in their application to the River Authority the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991, the Salmon and Freshwater Fisheries Act 1975, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the River Authority.