
STATUTORY INSTRUMENTS

1972 No. 1424

WATER RESOURCES, ENGLAND AND WALES

The Yorkshire River Authority
(Barmby Tidal Barrage) Order 1972

Made - - - 19th September 1972
Coming into Operation 29th September 1972

The Secretary of State for the Environment, in exercise of his powers under section 67 of the Water Resources Act 1963(a), section 36(2) of the Compulsory Purchase Act 1965(b), section 1 of the Water Resources Act 1971(c) and of all other powers enabling him in that behalf, hereby orders as follows:—

1. This order may be cited as the Yorkshire River Authority (Barmby Tidal Barrage) Order 1972. Citation.

2.—(1) In this order, unless the context otherwise requires, expressions to which meanings are assigned by the Act of 1963 have the same respective meanings; and Interpretation.

“the Act of 1963” means the Water Resources Act 1963;

“the Authority” means the Yorkshire River Authority;

“the deposited plan” and “the deposited sections” mean respectively the plan and sections prepared in duplicate, signed by an Under Secretary in the Department of the Environment and marked “Plan and Sections referred to in the Yorkshire River Authority (Barmby Tidal Barrage) Order 1972”, one duplicate of which has been deposited and is available for inspection at the offices of the Authority and the other at the offices of the Secretary of State;

“the Secretary of State” means the Secretary of State for the Environment;

“the works” means the works authorised by this order.

(2) The Interpretation Act 1889(d) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(3) Unless the context otherwise requires, any reference in this order to—

(a) any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by or by virtue of any subsequent enactment, including this order;

(b) a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this order.

(4) References in this order to reference points shall be construed as references to National Grid reference points.

(a) 1963 c. 38.

(b) 1965 c. 56.

(c) 1971 c. 34.

(d) 1889 c. 63.

- Application of Compulsory Purchase Act 1965.** **3.** In its application in relation to this order, Part I of the Compulsory Purchase Act 1965 shall have effect subject to the following exceptions and modifications:—
- (a) section 27 (Acquiring authority to make good deficiencies in rates) shall be omitted; and
 - (b) subsection (2) of section 11 (Powers of entry) shall have effect as if at the end of the first paragraph thereof there were inserted the words “(other than paragraph 3 (3) thereof)”.
- Purchase of land.** **4.** Subject to the provisions of this order, the Authority may purchase compulsorily such of the lands shown on the deposited plan within the limits of deviation and of land to be acquired as they may require for the purposes of this order.
- Construction of works.** **5.** Subject to the provisions of this order the Authority may in the lines or situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections construct, maintain, renew and alter the following works in the parish of Hemingbrough in the rural district of Derwent and in the parish of Barmby-on-the-Marsh in the rural district of Howden in the East Riding of the county of York:—
- Work No. 1—A diversion and improvement of the river Derwent commencing at reference point SE.68452876 and terminating at a junction point with the river Ouse at reference point SE.68052855;
- Work No. 2—Sluices and a navigation lock in the diversion of the river Derwent, part of Work No. 1 or in the said river or partly in the said diversion and partly in the said river including a bridge over the said diversion and access road leading thereto from the road known as Ferry Lane;
- Work No. 3—A wall or embankment across the river Derwent at reference point SE.68062873.
- Power to deviate.** **6.** The Authority in constructing the works may deviate from the lines thereof shown on the deposited plan to any extent not exceeding the limits of deviation shown on that plan and may deviate from the levels shown on the deposited sections to any extent not exceeding ten feet either upwards or downwards.
- Subsidiary powers.** **7.—(1)** Subject to the provisions of this order and within the limits of deviation shown on the deposited plan, the Authority in connection with and for the purposes of the works described in article 5 of this order, may—
- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, droves, ways, fords, towing paths and footpaths;
 - (b) make, provide and maintain all necessary and convenient walls, banks, embankments, piling, fences, culverts, drains, intakes, syphons, channels, weirs, sluices, wharves, mattresses, pitching, roads, droves, bridges, towing paths and footpaths, and all such mains, pipes, cables, wires, pumps, machinery, works and appliances as may be required;

- (c) construct and maintain new fords across watercourses and approaches to such fords, and widen, lengthen, alter and reconstruct existing fords and the approaches thereto;
- (d) stop up and discontinue so much of the watercourses shown on the deposited plan as will be rendered unnecessary by reason of the execution of the said works;
- (e) dispose of spoil or other material;
- (f) execute any works for the protection of any adjoining lands or buildings;
- (g) remove, alter, divert or stop up any watercourse or local authority sewer, the Authority providing a proper substitute before interrupting the flow of sewage in any sewer or water in any watercourse;
- (h) fell, lop or cut and remove any tree, bush, shrub or other vegetation; and
- (i) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928(a)).

(2) In the exercise of the powers conferred by this article, the Authority shall cause as little detriment and inconvenience to any person as circumstances admit.

8. The Authority may stop up and extinguish all rights of way over the footpaths in the said parish of Barmby-on-the-Marsh which are shown on the deposited plan as intended to be stopped up and thereupon all rights of way over and along the said footpaths shall be extinguished and the authority may appropriate and use for the purposes of this order the site and soil thereof so far as they are the owners of the land on both sides thereof.

Stopping up of footpaths.

9. The Authority shall provide in the said parishes of Barmby-on-the-Marsh and Hemingbrough footpaths between the points marked on the deposited plan respectively a and b, c and d and f and g and shall dedicate the same for public use not later than such date as shall be certified by the engineer of the Authority as being the date upon which Work No. 2 is completed.

Provision of alternative footpaths.

10.—(1) The Authority during and for the purposes of the execution of any of the works or obtaining materials for the construction thereof may temporarily stop up, alter, divert or otherwise interfere with any watercourse or highway or any private right of way, and, in the case of any highway or right of way, may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the highway or right of way from passing along and using the same.

Temporary stoppage of watercourses, highways, etc.

(a) 1928 c. 32.

(2) The Authority shall provide reasonable access for foot passengers with or without animals bona fide going to or from any such land, house or building.

(3) (a) The powers of paragraph (1) of this article shall not be exercised in relation to a highway without the consent of the highway authority, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment) as the highway authority may require, and any question whether such consent is unreasonably withheld, or any conditions so imposed are unreasonable, shall be determined by the Secretary of State;

(b) the powers of paragraph (1) of this article shall not be exercised in relation to any watercourse without providing a proper substitute before interrupting the passage of water in or through such watercourse, and the Authority shall make compensation for any damage caused to any person by the exercise of such powers in relation to any watercourse, the amount of such compensation being, in case of dispute, determined by the Lands Tribunal.

Discharge
of water.

11.—(1) For the purpose of controlling and regulating the volume, flow and quality of water in the river Derwent the Authority may by means of the sluices and navigation lock forming part of Work No. 2 discharge water at reference point SE.68102862 (or at any other point within the limit of deviation for Work No. 2 shown on the deposited plan) from the upper river into the lower river or from the lower river into the upper river.

(2) In this section—

“the lower river” means the river Ouse or so much (if any) of the river Derwent (as diverted under the powers of this order) as lies between Work No. 2 and the river Ouse;

“the upper river” means so much of the river Derwent (or of that river as so diverted) as lies above Work No. 2.

Fish pass.

12.—(1) The Authority may, if they think fit, construct adjacent to Work No. 2 and operate a fish pass.

(2) The cost of constructing and operating such a fish pass may be a charge upon the Authority’s water resources account as defined in section 83 of the Act of 1963.

For the
protection of
the British
Waterways
Board and
other
navigation
interests.

13. The Authority shall—

(a) dredge and maintain the approach channel between the river Derwent and the first lock of the Pocklington Canal at East Cottingwith to provide a bed level in the channel not higher than 3.2 feet above the Ordnance Datum Newlyn which is the level of the outer sill of the said lock for passage of pleasure craft between the river Derwent and the Pocklington Canal;

- (b) take all reasonable steps, including dredging or other remedial measures, to ensure that the navigation of the river Derwent from the river Ouse to Sutton Lock (but not including such lock) including the navigation into the said canal from the river Derwent is not significantly adversely affected by the exercise of the powers of this order;
- (c) within a period of two years from the completion of the works authorised by article 5 (Construction of works) of this order and thereafter the Authority shall ensure that there is a depth at low water for navigation in the river Derwent between the navigation lock at Barmby and East Cottingwith Lock and Sutton Lock of not less than five feet whenever the drainage of land adjacent to the river in the opinion of the Authority will not be prejudicially affected thereby, and in any event not less than four feet at all times.

14. On and after the completion of the construction of the works the following provisions for the protection of Cochrane & Sons Limited and their successors in title and other the owners and occupiers for the time being of the Ouse Shipbuilding Yard at Selby now owned by the said Cochrane & Sons Limited (in this section collectively called "the Company") shall, unless otherwise agreed in writing between the Authority and the Company, apply and have effect:—

For protection of Cochrane and Sons Limited.

- (1) If it is shown that by reason or in consequence of the construction of the works or the operation of the sluices and navigation lock forming part of Work No. 2 (otherwise than by the discharge of water) the navigable channel of the river Ouse between the said Ouse Shipbuilding Yard and the Ocean Lock at Goole shall be silted up or shifted so as to render such channel less safe, efficient or convenient for navigation by vessels proceeding from the said Ouse Shipbuilding Yard than the said channel is immediately before the date of the completion of the construction of the sluices and navigation lock forming part of Work No. 2 the Authority shall be responsible for any expenses reasonably incurred by the Company in connection with the carrying out of so much of any dredging rendered necessary by the said silting or shifting as is proved to be directly attributable to the construction or operation of the work and as is required for the purpose of maintaining the navigable channel in a condition no less safe, efficient or convenient for the navigation by such vessels as aforesaid as it is immediately before the said date.
- (2) Any difference or dispute arising between the Authority and the Company under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by a single arbitrator to be agreed between the parties or failing agreement to be appointed on the application of either of them (after notice in writing to the other) by the Secretary of State.

15.—(1) The Authority may borrow, without the consent of any sanctioning authority, for any of the purposes specified in column (1) of the following table, the sum specified in relation thereto in column (2) of that table.

Power to borrow.

Purpose for which money may be borrowed (1)	Amount (2)	Maximum period for repayment of loan (3)
(a) The purchase of lands for the works	The sum required	Sixty years
(b) The construction of the works except pumping plant and machinery form- ing part of Work No. 2	£670,000	Forty years
(c) The provision of pumping plant and machinery forming part of Work No. 2	£110,000	Twenty years
(d) The payment of the costs, charges and expenses of this order	The sum required	Ten years

(2) Every sum borrowed under paragraph (1) of this article shall be repaid within such period from the date of borrowing as the Authority without the consent of any sanctioning authority may determine, not exceeding the period specified in relation thereto in column (3) of the said table.

(3) The Authority may also with the sanction of the Secretary of State borrow such further sums as may be necessary for any of the purposes of this order, and any sum borrowed under the powers of this paragraph shall be repaid within such period, not exceeding sixty years, from the date of borrowing as the Authority, with the consent of the Secretary of State, may determine.

Costs of
order.

16. The costs, charges and expenses preliminary to, and of and incidental to, the preparing, applying for and obtaining of this order or otherwise in relation thereto shall be paid by the Authority.

J. E. Beddoe,
An Under Secretary in the
Department of the Environment.

Signed by authority of
the Secretary of State.
19th September 1972.