
STATUTORY INSTRUMENTS

1995 No. 519

The Barking Barrage Order 1995

PART V

THE UPSTREAM RIVER

Extinguishment of navigation rights etc. in upstream river and repeal of Act of 1737

35.—(1) All rights of navigation or access over and along the upstream river whether public or private and however arising shall be extinguished to the extent that such rights are adversely affected by reason of the construction or operation of the authorised works.

(2) For the avoidance of doubt it is hereby confirmed that all public rights of navigation over and along the upstream river are preserved and continue to be effective, save as expressly extinguished by or in accordance with this Order.

(3) The Borough shall pay compensation to any person who suffers damage by reason of the extinguishment effected by this article and any question as to the amount of compensation so paid shall be determined by the tribunal.

(4) In assessing any compensation payable under paragraph (3) the tribunal shall take account of—

- (a) the extent to which the rights mentioned in paragraph (1) have been exercised; and
- (b) the availability of the upstream river for navigation as provided in this Order.

(5) The Act passed in the year 1737 in the tenth year of the reign of King George II and entitled “An Act for making Navigable the River Roding, from a little below a Mill called Barking Mill in the County of Essex, to Ilford Bridge in the said County” is repealed from the date of the coming into force of this Order.

(6) Notwithstanding the repeal of the Act of 1737 by virtue of paragraph (5)—

- (a) riparian owners on the upstream river shall continue to have the right to keep vessels for non-commercial purposes and pass over the river toll-free with those vessels; and
- (b) the rights of fishing and fowling on the upstream river enjoyed before the Act of 1737 by the Lord or Lords of the Manor or Manors and owners or other persons entitled to such rights are preserved

as if the said Act had not been repealed.

Navigation etc. in vicinity of barrage

36.—(1) In this article—

“in the vicinity of the barrage” means on or in the area of water between a line drawn across the river at a whole circle bearing, to National Grid north, of 254 degrees from the downstream marker and a line drawn across the river at a whole circle bearing, to National Grid north, of 254 degrees from the upstream marker, and

“the downstream marker” means a physical marker set on or near the eastern bank of the river and indicated on the works plan at reference point 544112E, 183293N and the “upstream marker” means a similar marker at reference point 544097E, 183344N.

(2) Any person who without the consent of the Borough, other than in an emergency or with some other reasonable cause, moors a vessel to any part of the barrage shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any person who, other than in an emergency or with some other reasonable cause, navigates or allows to drift any vessel in the vicinity of the barrage, except for the purpose of passing through the barrage gates or waiting to do so or negotiating the weir on foot with a canoe or other vessel, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vessels

37.—(1) Whenever any vessel is sunk, stranded or abandoned in the upstream river, or without lawful authority left or moored therein, the Borough may after giving (except in an emergency) not less than 3 months' notice to the owner or master of the vessel (unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner or master), raise, remove or otherwise dispose of the vessel:

Provided that—

- (a) the above-mentioned power shall not be exercisable by the Borough (subject to article 40)—
 - (i) if it is within the powers of the Port Authority to deal with such vessel and the Port Authority decide to do so; and
 - (ii) if the Borough, having given not less than one month's notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter; and
- (b) where a vessel is left or moored adjoining riparian property the Borough shall give not less than one month's notice to the owner and/or occupier of that property enabling such owner or occupier to make representations to the Borough as to the proposed raising, removal or disposal of the vessel.

(2) The Borough may recover from the owner or master of any such vessel all expenses reasonably incurred by the Borough in respect of the raising, removal, storage or disposal thereof or in raising, removing, storing or disposal of any furniture, tackle and apparel thereof or any goods, chattels and effects raised or removed therefrom.

(3) Subject to paragraph (4), if any vessel to which paragraph (1) applies be not within 6 weeks of its removal by the Borough proved to the satisfaction of the Borough to belong to any claimant, it shall together with any such furniture, tackle and apparel vest in the Borough.

(4) If within 12 months of its removal a claim is made to the vessel by a person who subsequently proves to the satisfaction of the Borough that he was the owner or master thereof, or has become the owner or master since the vessel was sunk, stranded, abandoned, left or moored as mentioned in paragraph (1) then the Borough shall—

- (a) if the vessel is unsold, permit that person to retake it with any furniture, tackle, apparel, goods, chattels and effects thereon upon payment of the expenses referred to in paragraph (2); or
- (b) if the vessel and the furniture, tackle and apparel thereon have been sold, pay to that person the amount of the proceeds of such sale after deducting the said expenses, and in case such proceeds shall be insufficient to reimburse the Borough such expenses the deficiency may be recovered from that person by the Borough.

- (5) In this article, unless the context otherwise requires—
- “owner” in relation to any vessel sunk, stranded, abandoned, left or moored as aforesaid means the owner of the vessel at the time of the sinking, stranding, abandonment, leaving or mooring thereof; and
 - “vessel” includes any part of a vessel.

Removal of obstructions other than vessels

- 38.**—(1) The Borough may remove—
- (a) anything, other than a vessel, causing or likely to become an obstruction or impediment to navigation in any part of the upstream river; and
 - (b) anything causing or likely to become an obstruction or impediment to the proper use of a footpath adjacent to or over the upstream river.
- (2) The above-mentioned power shall not be exercisable (subject to article 40)—
- (a) if it is within the powers of the Part Authority to deal with such obstruction and the Port Authority decide to do so; and
 - (b) if the Borough, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that the Port Authority intends to act and it does act within a reasonable time thereafter.
- (a) (3) (a) If anything removed by the Borough under paragraph (1) is so marked as to be readily identifiable as the property of any person, the Borough shall within one month of its coming into its custody give notice, as required by paragraph (5), to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall at the end of that period vest in the Borough.
- (b) If anything removed by the Borough under paragraph (1) which is not so marked is not within 3 months of its coming into the custody of the Borough proved to its reasonable satisfaction to belong to any person, it shall thereupon vest in the Borough.
- (4) The Borough may at such a time and in such manner as it thinks fit dispose of anything referred to in paragraph (3) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Borough under this article, and if it is sold the proceeds of sale shall be applied by the Borough in payment of the expenses incurred by it under this article, and any balance—
- (a) shall be paid to any person who, within 3 months from the time when the thing came into the custody of the Borough proves to the reasonable satisfaction of the Borough that he was the owner thereof at that time; or
 - (b) if within the said period no person proves his ownership at the same time, shall vest in the Borough.
- (5) A notice given under paragraph (3)(a) shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction to the Borough, possession may be retaken at a place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.
- (6) If anything removed under this article—
- (a) is sold by the Borough and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred by it in the exercise of its powers of removal; or
 - (b) is unsaleable;

the Borough may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner at the time when the thing removed came into the custody of the Borough or who was the owner at the time of its abandonment or loss.

Removal of projections

39.—(1) In this article “projection” means anything which projects over the upstream river or any footpath adjoining the upstream river and includes stairs and any tree, bush or other plant but does not include any such things authorised by or under statute or by a works licence under section 66 of the Act of 1968 to be placed or constructed.

(2) If any projection is a danger to the navigation of the upstream river or to persons using any footpath adjoining the same, the Borough may remove it and recover the expenses of removal from the owner or occupier of the land on which the projection was situated.

(3) The above-mentioned powers shall not be exercisable (subject to article 40) if—

- (a) it is within the powers of the Port Authority to deal with such projection and the Port Authority decide to do so; and
- (b) the Borough, having given not less than one month’s notice to the Port Authority, is informed by the Port Authority within that time that it intends to act and it does act within a reasonable time thereafter.

(4) If any projection is an obstruction or inconvenience to the navigation of the upstream river, but not a danger thereto, the Borough may by notice require the owner or occupier of the land on which the projection is situated to remove the projection within such time, not being less than 7 days, as may be specified in the notice.

Emergency powers and consents

40.—(1) The Borough’s powers under articles 37, 38 and 39 may be exercised by the Borough in an emergency without prior notice to the Port Authority provided that the Port Authority are informed of the action as soon as possible thereafter.

(2) The Borough’s powers under articles 37, 38 and 39 are except in an emergency subject to any necessary consents.

Agency arrangements

41. The Port Authority may at any time after the coming into force of this Order enter into an arrangement with the Borough by which the Borough exercises on behalf of the Port Authority any of its powers or duties in respect of the upstream river, and such arrangement may contain any terms or conditions including any relating to the defraying of or the making of contributions towards the cost thereof that the Borough and the Port Authority may agree to be appropriate.

Byelaws

42.—(1) In this article, the “upstream river” shall mean the whole or any specified part of the upstream river.

(2) The Borough may make byelaws in relation to the upstream river in accordance with section 236 of the Local Government Act 1972(1) in connection with this Part of this Order and its functions as a navigation authority (as defined in section 221 of the Water Resources Act 1991) for all or any of the following purposes—

(1) 1972 c. 70.

- (a) for securing the conservation and improvement of the upstream river and its amenities for the purposes of recreation, for prohibiting or regulating recreational activities and for promoting the ease, convenience and safety of navigation;
 - (b) for regulating the navigation of the upstream river and for the prevention of obstruction to such navigation or a footpath adjoining the upstream river;
 - (c) for regulating the speed and movement of vessels on the upstream river;
 - (d) for requiring the registration of, or of any class of, vessels including houseboats, the renewal and revocation of registration, and for prohibiting the use for navigation of the upstream river by vessels which are required to be but are not registered with the Borough;
 - (e) for prescribing, after consultation with the fire authority, precautions for the prevention of fire and precautions to be taken in cases of fire or accident occurring in or to any vessel;
 - (f) for prescribing the conditions on which vessels providing sleeping accommodation (whether or not being houseboats) shall be allowed on the upstream river and for prohibiting the mooring of such vessels for overnight use on the upstream river except at places approved by the Borough or unless suitable and sufficient sanitary conveniences exist or are provided upon the land adjacent to the point of mooring for the use of the occupants of such vessels;
 - (g) for preventing or controlling pollution, including the provision of sanitary appliances, by vessels on the upstream river;
 - (h) for regulating the launching of vessels within the upstream river, the placing, maintenance and use of mooring and the use of pontoons, slipways and landing places;
 - (i) for securing the safety of vessels and persons using, and of property within, the upstream river;
 - (j) for prohibiting or regulating the discharge into the upstream river of any material or substance;
 - (k) for requiring the use of effectual silencers and the control of noise generally on vessels in the upstream river;
 - (l) for preventing damage to any land or property situated in or about the upstream river;
 - (m) for preserving flora and fauna in, or on the banks of, the upstream river;
 - (n) for regulating the passage of vessels, or any class of vessels, through the barrage gates or over or through other structures, works or apparatus in the upstream river, either generally or in circumstances prescribed by the byelaws;
 - (o) for the licensing of works in the upstream river or related to its banks and prohibiting unlicensed works;
 - (p) for the control and removal of private moorings;
 - (q) for the repair and removal of landing places and embankments;
 - (r) for the removal of projections over the upstream river or any footpath adjoining the upstream river;
 - (s) for the making and recovery of reasonable charges in respect of the use of the upstream river or properties occupied or used by or on behalf of the Borough in connection with the upstream river.
- (a) (3) (a) The Borough shall not make any byelaws under this article without the consent of the River Authority and the Port Health Authority.
- (b) The Borough shall not make any byelaws without the consent of the Port Authority in respect of the whole or any part of the upstream river where it lies within the limits of the Port Authority as defined by the Act of 1968.

- (c) Where a proposed byelaw will affect the upstream river or any footpath adjoining the same within the boundaries of Redbridge, such byelaw shall not be made without the consent of Redbridge, such consent not to be unreasonably withheld.
 - (d) Where a proposed byelaw will affect the railway survey area, as defined in article 74, such byelaw shall not be made without the consent of the Railway Undertaker, such consent not to be unreasonably withheld.
- (4) The River Authority and the Port Health Authority shall not withhold their consent to the making of any byelaw except on the ground that it conflicts with or duplicates a byelaw of that authority; and any unresolved question whether there is any such conflict or duplication shall be determined by the Secretary of State.
- (a) (5) (a) Nothing in any byelaw made under this article shall apply to anything done by the Port Authority in the exercise of any of their statutory functions or be of any effect if and in so far as it affects the operation of, or is inconsistent with, any byelaw of the Port Authority for the time being in force.
 - (b) No byelaw made under this article shall entitle the Borough to charge for the registration of any vessel used for non-commercial purposes and owned by a riparian owner on the river upstream of the barrage within Redbridge nor for the use of the upstream river for navigation by such owner in any such vessel.
 - (c) No byelaw made under paragraph (2)(d) shall apply to boats used by the River Authority, the Port Authority or the Port Health Authority in the exercise of their statutory functions and no byelaw under paragraph (2)(o) shall apply to works executed or authorised by the Port Authority or executed by the River Authority or the Port Health Authority in pursuance of their statutory functions.
 - (d) In making any byelaws under this article the Borough shall take into account matters relating to public safety and any reasonable requirements of the Crown, the River Authority, the Railway Undertaker, the Port Authority and the Port Health Authority.
 - (e) Where a proposed byelaw will affect the upstream river where it is subject to Crown interests such byelaw shall not be made without prior consultation of the Crown.
- (6) Byelaws made under paragraph (2)(d) may authorise the Borough—
- (a) to make reasonable charges in respect of the regulation of vessels, including different charges for the use of the upstream river by vessels of different descriptions;
 - (b) to attach conditions to the registration of vessels, and to make registration revocable in circumstances specified in the byelaws;
 - (c) to grant exemptions from the requirements of registration;
 - (d) to inspect vessels or have them inspected on behalf of the Borough in connection with their registration; and
 - (e) to require notice of the transfer or sale of any vessel so registered to be given to the Borough.
- (a) (7) (a) Nothing in any byelaws made under paragraph (2)(d) shall require the registration of—
- (i) any newly constructed or newly restored vessel in respect of any bona fide trial trip of such vessel on the upstream river;
 - (ii) any vessel in respect of its movement from any boat-builder's yard on the upstream river to any other place thereon with a view to its immediate removal from the upstream river; or
 - (iii) any vessel for the purpose of its participation in any regatta or boat race.

- (b) Not less than 48 hours' notice in writing shall be given to the Borough of the intention to make such trip, move such vessel or use it in such regatta or boat race, and any conditions specified by the Borough in that behalf shall be complied with.
- (8) Any charge payable in respect of a certificate of registration issued under byelaws made under this article shall be recoverable by the Borough from the owner of the vessel so registered or other person who has applied for its registration.
- (9) Byelaws made under this article may relate to the whole of the upstream river and the banks thereof, or to any part thereof, and may make different provisions for different parts.
- (10) Byelaws made under this article may provide for the imposition on any person offending against any byelaws of a fine on summary conviction not exceeding level 3 on the standard scale.
- (11) The Secretary of State may charge the Borough a reasonable fee for the purpose of defraying any administrative expenses incurred by him in respect of byelaws made under this article which are submitted to him for confirmation.

Temporary closure of upstream river

- 43.**—(1) The Borough may temporarily prohibit, restrict or regulate the use and navigation of the upstream river or any part thereof to facilitate the holding of any boat race or regatta or of any other function in connection with the use of the upstream river as a place of recreation.
- (a) (2) (a) Before exercising their powers under paragraph (1) the Borough shall give notice of the proposal to exercise the powers by advertisement in one or more local newspapers circulating in the area of the Borough.
 - (b) The notice shall be published not less than 28 days before the powers are to be exercised and shall state the extent to which, the period during and the purpose for which the use and navigation of the upstream river is to be prohibited, restricted or regulated.
- (3) A copy of the notice published under paragraph (2) shall be conspicuously displayed in such one or more places on or adjacent to the upstream river or the part thereof to which it relates as the Borough consider appropriate for bringing its contents to the notice of persons using or navigating the upstream river.
- (4) The powers of this article shall not be exercised without the consent of the Port Authority and Redbridge, whose consent shall not in either case be unreasonably withheld, and any unresolved question whether such consent is unreasonably withheld shall be referred to and settled by arbitration.
- (5) When granting consent under this article the Port Authority or Redbridge may impose reasonable conditions.
- (6) Neither the Borough nor the Port Authority 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 temporary prohibition, restriction or regulation on the use and navigation of the upstream river or any part thereof under paragraph (1).

Powers of statutory authorities

- 44.** The powers and duties of the Port Authority, the River Authority and any other statutory authority under this Part of the Order shall only apply while that authority has jurisdiction in respect of the whole or any part of the upstream river.

List of charges

- 45.** A list showing the charges prescribed in accordance with byelaws made under article 42 for the time being in force under this Part shall be displayed at one or more convenient places on or

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adjacent to the upstream river and a copy of the list shall be supplied, free of charge, by the Borough on request to any person appearing to have an interest.

Provision for charitable or other bodies

46. The Borough may at its discretion remit or reduce any charge shown in the list referred to in article 45 in respect of any houseboat or other vessel used for charitable purposes or for purposes which the Borough considers merit remission or reduction of the charge.