
STATUTORY INSTRUMENTS

1999 No. 2587

TRANSPORT AND WORKS, ENGLAND

The Pur Fleet (King's Lynn) Order 1999

Made - - - - *6th August 1999*

Coming into force - - *27th August 1999*

Whereas an application has been made to the Secretary of State for the Environment, Transport and the Regions ("the Secretary of State"), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992(1) made under sections 6, 7 and 10 of the Transport and Works Act 1992(2) ("the Act"), for an Order under sections 3 and 5 of the Act;

And whereas in the opinion of the Secretary of State the primary object of the Order could not be achieved by means of an order under the Harbours Act 1964(3);

And whereas the objections to that application have been withdrawn;

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State's determination was published in the London Gazette on 4th August 1999;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 3 and 5 of, and paragraphs 1, 2, 4, 5, 8, 11, 13 and 17 of Schedule 1 to, the Act and article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992(4) and of all other powers enabling him in that behalf, hereby makes the following Order:—

(1) S.I.1992/2902.

(2) 1992 c. 42.

(3) 1964 c. 40.

(4) S.I. 1992/3230. The Order was amended by S.I. 1997/2906 but those amendments are not relevant for the purposes of this Order.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Pur Fleet (King’s Lynn) Order 1999 and shall come into force on 27th August 1999.

Interpretation

2. In this Order, unless the context otherwise requires—

“the Agency” means the Environment Agency;

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;

“authorised” means authorised by this Order;

“the barrage” means the barrage forming Work No. 1 in the Schedule to this Order;

“the borough” means the borough of King’s Lynn and West Norfolk;

“the Council” means the Council of the borough;

“the harbour authority” means the King’s Lynn Conservancy Board;

“the creek” means the creek known as Pur Fleet, on the east side of the river in the borough;

“the deposited plan” means the plan described in rule 7(1)(a) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the deposited plan” for the purposes of is Order;

“the existing dam” means the dam across the creek authorised to be constructed under the Anglian Water Authority (King’s Lynn Tidal Defences) Act 1984(5);

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

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” all be construed accordingly;

“the river” means the river Great Ouse;

“the scheduled works” means the works specified in the Schedule to this Order;

“the sections” means the sections described in rule 7(2) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the sections” for the purposes of this Order;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of mean high water springs;

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

“the works” means the scheduled works and any other authorised works.

PART II

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

3.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 4 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plan and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5) below, the Council may carry out and maintain such of the works specified in sub-paragraphs (a) to (d) below as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works, namely—

- (a) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses,
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works,
- (c) works for the benefit or protection of premises affected by the scheduled works, and
- (d) works for the removal, alteration, diversion or stopping-up of any apparatus, including cables, mains, drains, sewers or watercourses, the Council providing a proper substitute before interrupting the flow in any such drain, sewer or watercourse and obtaining the consent (which shall not be unreasonably withheld) of the owner of any such apparatus before carrying out any such work (unless, if after reasonable enquiry the identity of the owner cannot be ascertained).

(4) Subject to paragraph (5) below, the Council may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

(5) Paragraphs (3) and (4) above shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

Power to deviate

4. In constructing or maintaining any of the scheduled works, the Council may—

- (a) deviate laterally from the lines or situations shown on the deposited plan within the limits of deviation for that work shown on that plan, and
- (b) deviate vertically from the levels shown on the sections to any extent not exceeding 1 metre upwards and to any extent downwards.

Exclusion of section 25 of Water Resources Act 1991

5. Section 25 of the Water Resources Act 1991(6) shall not apply to the barrage.

Creek not to be a reservoir

6. Notwithstanding the provisions of subsection (2) of section 1 of the Reservoirs Act 1975(7), so much of the creek as is impounded by the barrage shall not, by virtue of the retention of water

(6) 1991 c. 57.

(7) 1975 c. 23.

by means of the barrage, be taken to be a reservoir for the purposes of that Act or for the purposes of Schedule 2 of that Act.

Supplemental

Diversion of flow of water in certain watercourses

7. The Council may by means of the works divert, abstract, intercept, or otherwise interfere with the waters or the flow of water in the creek or the river.

Power to Council to interfere with existing dam

8.—(1) Subject to the provisions of this Order, the Council may for the purposes of regulating the level of water which may be impounded as a consequence of the construction of the barrage, fill in, alter or remove any sills, tide flaps, sluices or other similar devices whatsoever forming part of the existing dam.

(2) The Council shall pay compensation to all persons for any damage sustained by them or liability to which they may become subject by reason of the exercise by the Council of the powers of this article and any question as to the amount of the compensation to be so paid shall be determined by the Lands Tribunal.

Power to take, pump and discharge water

9.—(1) Except as provided in paragraphs (2) and (3) below, notwithstanding anything contained in any other enactment the Council may, for the purposes of or in connection with the exercise of their functions under this Order, take, impound and use water from the creek or pump any water from the creek into any sewer, drain or watercourse and for any of those purposes may, within the limits of deviation, lay down, take up and alter conduits, pipes and other works and conveniences and make any convenient connections with the creek or, as the case may be, with the sewer, drain or watercourse.

(2) The Council shall not, under the powers of this article—

- (a) discharge any water into any sewer or drain except with the consent (which shall not be unreasonably withheld) of the sewerage undertaker or (in the case of a private sewer or drain) the owner and subject to such terms and conditions as the sewerage undertaker or the owner, as the case may be, may reasonably impose, and
- (b) make any opening into any such sewer or drain save in accordance with plans approved by and under the superintendence, if given, of, the sewerage undertaker or the owner, as the case may be, but such approval shall not be unreasonably withheld.

(3) Subject to article 5 above, nothing in this article shall relieve the Council from the requirements of the Water Resources Act 1991.

(4) Section 85 of the Water Resources Act 1991 shall apply to a discharge under the powers of this article into any controlled waters within the meaning given by section 104 of that Act as if this article were excluded from the reference to any local statutory provision mentioned in section 88(1) (f) of that Act.

(5) In paragraph (2) above “owner” includes any person with a right to use the private sewer or drain in question.

Agreements with owners of land and others for execution of works

10.—(1) The Council may enter into agreements with the Agency or the owners of, or other persons interested in, any land in or through which the works are or may be constructed or the

drainage of which may be affected by the construction of the works for or with respect to the doing of anything which may be rendered necessary or convenient by reason or in consequence of the exercise of the powers of this Order.

- (2) Any such agreement may provide for—
- (a) the payment by the Council of, or the making of contributions by them towards, the cost incurred by the Agency or any such owners or other persons in or in connection with the doing of any such thing, or
 - (b) the payment by the Council of compensation for any injury suffered or loss incurred by the Agency or any such owners or other persons by reason or in consequence of the execution by the Council of the works.

Operation of sluices

11. Notwithstanding anything in any enactment or in any rule of law, the Council may operate the sluices, culverts or moveable sections or gates comprised in the barrage to control the level of water impounded in the creek, in such manner and for such periods as they think necessary or desirable.

Misuse of sluices, etc.

12.—(1) Any person who, without lawful authority, closes or opens the sluices, culverts or moveable sections or gates comprised in the barrage or in any other way interferes with those sluices, culverts, sections or gates or the operation thereof, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of any offence under paragraph (1) above as respects any act done in an emergency in order to avoid danger to any person or property.

Tidal Works

Tidal works not to be executed without approval of the Secretary of State

13.—(1) A tidal work shall not be constructed, altered, replaced, relaid or reconstructed 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, replaced, relaid or reconstructed 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 a period of 30 days beginning with the date on which the notice is served upon the Council they shall 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.

Lights on tidal works during construction

14.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration, replacement, relaying or re-construction 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 the Secretary of State shall from time to time direct.

(2) If the Council fail to comply with any requirement of a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

15.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Council shall as soon as is reasonably practicable notify Trinity House 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 fail to notify Trinity House as required by this article, or to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

16.—(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 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 vested in the Council 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 given under this article.

(3) If, on the expiration of 30 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 him in so doing shall be a debt due from the Council to the Crown and shall be recoverable from the Council.

Survey of tidal works

17. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work and any expenditure incurred by the Secretary of State in such a survey and examination shall be a debt due from the Council to the Crown and shall be recoverable from the Council.

Permanent lights on tidal works

18.—(1) The Council shall at the outer extremity of every tidal work 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 without reasonable excuse to comply in any respect with a direction given under this article they shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART III

MISCELLANEOUS AND GENERAL

Byelaws

19.—(1) The Council may make byelaws in connection with this Order for all or any of the following purposes:—

- (a) for regulating or preventing fishing in the creek, whether generally or by such means, and for such types of fish, as may be specified in the byelaws,
- (b) for preventing swimming in the creek,
- (c) for regulating or preventing the placing of vessels or any other object in the creek,
- (d) for prohibiting or regulating the discharge into the creek of any material or substance.

(2) In paragraph (1)(a) above “fish” includes any marine creature, or any other creature which lives in the waters of the creek, and “fishing” shall be construed accordingly.

(3) 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.

(4) In its application to byelaws relating to the creek made by the Council under any enactment, section 236 of the Local Government Act 1972⁽⁸⁾ shall have effect as if in subsection (7) after the word “confirm” where it first occurs the words “with or without modification” were inserted.

(5) Where the Secretary of State proposes to make to any byelaws submitted to him for confirmation 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 upon, the proposed modification by the Council and by other persons who have been informed of it.

(6) The Secretary of State may charge the Council 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.

Alteration of limits of harbour

20.—(1) The limits of the Port and Harbour of King’s Lynn, defined in sections 45 and 46 of the King’s Lynn Conservancy Act 1897⁽⁹⁾ shall cease to include any part of the creek that lies between the western edge of the barrage and the western edge of the existing dam.

(2) Nothing in this section shall derogate from any rights of the harbour authority as a landowner.

Certification of plans, etc.

21. The council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plan and the sections to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plan referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

⁽⁸⁾ 1972 c. 70.

⁽⁹⁾ 1897 c.cxcvi.

Obstructing execution of Order

22. A person who obstructs any person acting in the execution of this Order or without reasonable excuse pulls up any peg or stake driven into the ground for the purposes of setting out the line, level or site of any of the works or otherwise interferes with equipment or materials used in the construction of the works, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

23.—(1) In proceedings for an offence under articles 12, 14, 15 or 18 above it shall be a defence for the Council to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 days before the hearing, they have served on the prosecutor a notice in writing giving such information as was then in their possession, identifying or assisting in the identification of, that other person.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions.

A S D Whybrow
Head of Charging and Local Transport Division,
Department of the Environment, Transport and
the Regions

6th August 1999.

SCHEDULE

Article 2

DESCRIPTION OF SCHEDULED WORKS

In the borough of Kings Lynn and West Norfolk—

Work No. 1

A barrage across the creek incorporating sluices, culverts fitted with tide flaps, moveable sections or gates, sills and a walkway commencing on the northern bank of the creek at reference point TF61542002 and terminating on the southern bank of the creek at reference point TF61552000.

Work No. 2

Strengthening works consisting of a latticed structure on the bed of the creek in the area of the creek bound by the existing dam, the barrage and the northern and southern banks of the creek.