

2001 No. 1086

TRANSPORT AND WORKS, ENGLAND

**The Portsmouth Harbour (Gunwharf Quays)
(Millennium Tower) Order 2001**

Made - - - - - *26th February 2001*

Coming into force - - *19th March 2001*

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[DOT 12396]

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(a) made under sections 6, 7 and 10 of the Transport and Works Act 1992(b) (“the Act”), for an Order under sections 3 and 5 of the Act;

And whereas the Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964(c);

And whereas the Secretary of State has taken into consideration the grounds of objections to that application;

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 to make this Order was published in the London Gazette on 23rd February 2001;

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, 7, 8, 10, 15, 16 and 17 of Schedule 1 to, the Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I PRELIMINARY

Citation and commencement

1. This Order may be cited as the Portsmouth Harbour (Gunwharf Quays) (Millennium Tower) Order 2001 and shall come into force on 19th March 2001.

Interpretation

2.—(1) In this Order—

“the Act” means the Transport and Works Act 1992;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

“the deposited section” means the section certified by the Secretary of State as the deposited section for the purposes of this Order;

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

“the limits of deviation for construction purposes” means the limits of deviation for construction purposes shown on the deposited plans;

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

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

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

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

“the undertaker” means the Berkeley Festival Waterfront Company Limited.

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

(a) S.I. 1992/2902.

(b) 1992 c. 42.

(c) 1964 c. 40.

PART II
WORKS PROVISIONS

Power to construct works

- 3.—(1) The undertaker may construct and maintain the scheduled works.
- (2) Subject to article 4 below, the scheduled works shall be constructed in the situations shown on the deposited plans and in accordance with the levels shown on the deposited section.
- (3) The undertaker may within the limits of deviation for construction purposes carry out such other works (of whatever nature) as may be necessary, convenient or expedient for the purposes of, or in connection with, the construction of the scheduled works.
- (4) The undertaker may break out and remove in so far as may be necessary and convenient for the construction and maintenance of the scheduled works any such structures as are wholly contained within the limits of deviation.

Power to deviate

4. In constructing or maintaining the scheduled works, the undertaker may—
- (a) deviate laterally from the situations shown on the deposited plans for a distance not exceeding 5 metres within the limits of deviation for construction purposes;
 - (b) deviate vertically from the levels shown for that work on the deposited section—
 - (i) to any extent not exceeding 5 metres upwards, or
 - (ii) to any extent downwards as may be necessary or convenient.

Discharge of water

- 5.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land shown on the deposited plans within the limits of deviation for construction purposes, make openings into, and connections with, the watercourse, sewer or drain.
- (2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.
- (3) The undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.
- (4) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (5) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(a).
- (6) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, a local authority or a harbour authority within the meaning of the Harbours Act 1964(b),

(a) 1991 c. 57.
(b) 1964 c. 40.

- (b) “watercourse” includes all rivers, tidal rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain, and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

PART III

MISCELLANEOUS AND GENERAL

Power to dispose, transfer, lease, etc. the undertaking or its operation

6. The undertaker may at any time transfer, assign, lease or otherwise dispose of the whole or any part of the authorised works or their operation and the transferee shall become the undertaker for the purposes of this Order in respect of that part of the authorised works or their operation transferred to him.

Protection of Railtrack

7. Any agreements for the protection of Portsmouth Harbour Railway Station and adjoining property of Railtrack PLC, which are or have been entered into between Railtrack PLC and the Berkeley Festival Waterfront Company Limited in relation to the exercise of the powers of this Order shall apply to the exercise of the powers of this Order by any person to whom all or any part of the authorised works or their operation is disposed of, under article 6 above, as they apply to the exercise of the powers by the Berkeley Festival Waterfront Company Limited.

Tidal works

8. The provisions of Schedule 2 to this Order shall have effect.

Certification of plans etc.

9. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the deposited section and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the deposited section and the deposited plans 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.

Service of notices

10.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, his last known address at the time of service.

(4) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c. 30.

Resolution of disputes

11. Any difference under any provision of this Order 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 party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

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

Ellis Harvey
Head of the Transport and Works Act Processing Unit,
Department of the Environment,
Transport and the Regions

26th February 2001

SCHEDULED WORKS

In the City of Portsmouth—

Construction of piled foundations on the area shown shaded grey upon the deposited plan marked “Works Plan” and a fixed tower observation structure with platforms or galleries for viewing events, objects or the surrounding region upon the piled foundations together with such ancillary structures as may be necessary including without limitation connecting structures and ship impact protection works.

SCHEDULE 2

TIDAL WORKS

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

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

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition, 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 undertaker as a simple contract debt.

2.—(1) The undertaker shall at or near the tidal work during the whole time of the construction, alteration, replacement or relaying 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 after consulting the Queen’s Harbour Master may from time to time direct.

(2) If the undertaker fails to comply with any requirement of a direction given under sub-paragraph (1) above it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof the undertaker shall as soon as is 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 after consulting the Queen’s Harbour Master may from time to time direct.

(2) If the undertaker fails to notify Trinity House as required by sub-paragraph (1) above or to comply with any requirement of a direction under it, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its 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 he thinks fit.

(2) Where—

- (a) 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
- (b) that part of the work on or over land above the level of high water is in such a condition as to interfere, or 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 sub-paragraph (1) above.

5.—(1) After the completion of a tidal work the undertaker shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House after consulting the Queen’s Harbour Master may from time to time direct.

(2) If the undertaker fails to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

6. If, on the expiration of 30 days from the date on which a notice under paragraph 4 of this Schedule is served upon the undertaker, the undertaker has 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 undertaker as a simple contract debt.

7. 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 a tidal work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker as a simple contract debt.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order authorises the Berkeley Festival Waterfront Company Limited to construct works which interfere with navigation, namely a fixed observation structure for viewing events, objects and the surrounding region, in Portsmouth Harbour at Gunwharf Quays.

Copies of the deposited plans and the deposited section are available for inspection free of charge during opening hours at the offices of Portsmouth City Council, Civic Offices, Guildhall Square, Portsmouth PO1 2AS.

£2.00

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