
STATUTORY INSTRUMENTS

2007 No. 608

The Ouseburn Barrage Order 2007

PART 2

WORKS PROVISIONS

Principal powers

Power to construct works and survey

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

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) The Council may, within the limits of deviation, carry out and maintain such works for the benefit or protection of maritime traffic as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(4) Subject to paragraph (5), the Council may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (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) monitoring and surveying the Ouseburn.

(5) Without prejudice to the generality of paragraph (4), within the limits of deviation or on any land to be acquired or used by the Council for the purposes of this Order the Council may, for the purposes of, and for purposes ancillary to, the construction or maintenance of the authorised works—

- (a) make junctions and communications between any of those works and any watercourses and any existing streets, roads, ways, river walls, bridges and footpaths;
- (b) make, provide and maintain all necessary or convenient—
 - (i) buildings, walls, banks, embankments, slipways, pavings, yards, moorings;
 - (ii) rollers and other facilities for transporting boats; and
 - (iii) piling, fences, culverts, drains, intakes, syphons, watercourses, weirs, sluices, wharves, mattresses, pitching, gabions, roads, bridges, paths, mains, pipes, cables, wires, machinery works and appliances.

(6) Section 9 of the Salmon and Freshwater Fisheries Act 1975(1) shall not apply to the construction of the authorised works or to the alteration thereof.

(1) 1975 c. 51.

(7) On the completion of any part of the works authorised by this article the Council shall remove all temporary works placed by it in exercise of the powers conferred by this article.

Power to deviate

4.—(1) Subject to paragraph (3), in constructing or maintaining any of the scheduled works the Council may deviate laterally from the lines or situations shown on the works plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the sections to any extent upwards or downwards.

(2) The scheduled works shall be so constructed that—

- (a) the unobstructed opening between the walls of the lock, as shown on the works plans and sections, is not less than 5 metres wide;
- (b) the headroom for vessels passing through the lock is not less than 5 metres above the crest level of the weir as specified in sub-paragraph (d);
- (c) the cills at each end of the lock are set at 1.5 metres below Ordnance Datum (Newlyn) or at such other level as may be agreed between the Council and the Port Authority to be the level of the bed of the Ouseburn at that point immediately before the construction of the scheduled works is commenced;
- (d) the level of the crest of the weir, as shown on the works plans and sections, is set at 2.6 metres above Ordnance Datum (Newlyn) with a tolerance of plus or minus 10 millimetres;
- (e) the width of the crest of the weir, as shown on the works plans, is not less than 5 metres; and
- (f) they shall not interfere with the structure of the Glasshouse Bridge.

(3) Nothing in paragraph (4) or paragraph (5) of article 3 (power to construct works and survey) shall authorise the Council to execute any works in contravention of the restrictions imposed by paragraph (2) of this article.

Streets

Power to execute street works

5.—(1) The Council may, for purposes ancillary to the authorised works, enter upon so much of any of the streets specified in columns (1) and (2) of Schedule 2 (streets subject to street works and to be temporarily stopped up) as is within the limits of land to be acquired or used and may—

- (a) break up or open the street, or any sewer, drain, or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets and extinguishment of rights

6.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 3 (street to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(2) Where a street has been stopped up under this article, all rights of way over or along the street so stopped up shall be extinguished.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the Land Compensation Act 1961(2).

(4) This article is subject to paragraph 2 of Schedule 5 (provisions relating to statutory undertakers etc.).

Temporary stopping up of streets

7.—(1) The Council may, during and for the purpose of carrying out the authorised works, temporarily stop up, alter or divert any street specified in columns (1) and (2) of Schedule 2 (streets subject to street works and to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule and may for any reasonable time—

- (a) divert the traffic from the street;
- (b) subject to paragraph (2), prevent all persons from passing along the street; and
- (c) use the stopped up parts of the street as a temporary working site.

(2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the power conferred by this article if there would otherwise be no such access.

(3) The Council shall not exercise the powers conferred by this article in relation to any street specified as mentioned in paragraph (1) without first consulting the street authority.

(4) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the Land Compensation Act 1961.

(5) This article is subject to paragraph 2 of Schedule 5 (provisions relating to statutory undertakers etc.).

Application of the 1991 Act

8.—(1) The provisions of the 1991 Act mentioned in paragraph (2) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this Order where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(2) The provisions of the 1991 Act referred to in paragraph (1) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Supplementary powers and provisions

Power to dredge etc.

9.—(1) The Council may deepen, dredge and remove obstructions from the bed, foreshore and banks of, the Ouseburn—

- (a) for the purposes of the construction, operation or maintenance, of the scheduled works; or
- (b) for the purpose of facilitating the navigation of vessels; or
- (c) for the purpose of ensuring the water level upstream of the scheduled works is always higher than the level of the bed of the Ouseburn.

(2) The powers conferred by this article shall only be exercisable with the prior written consent of the Port Authority, such consent not to be unreasonably withheld.

(3) The Council shall pay compensation to all persons for any damage sustained by them by reason of the exercise by the Council of its powers under paragraph (1)(a) and the amount of the compensation to be paid, where not agreed, shall be determined by the tribunal.

(4) The Council may use, appropriate or sell or otherwise dispose of anything (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995(3)) removed in exercise of the power conferred in paragraph (1).

Cables, pipes or wires under or over tidal water or tidal lands

10. Notwithstanding anything in this Order, any cables, pipes or wires to be laid or placed by the Council pursuant to this Order (other than those laid or placed within or attached to the structure of the scheduled works) under or over any tidal waters or tidal lands below the level of high water shall be laid or placed at such depth under, or such height over, tidal waters or tidal lands as the Port Authority and the Environment Agency may require.

Ouseburn not to be a reservoir

11. Notwithstanding the provisions of subsection (2) of section 1 of the Reservoirs Act 1975(4), no part of the Ouseburn as is impounded by the scheduled works shall, by virtue of the retention of water by means of the scheduled works, be taken to be a reservoir for the purposes of that Act.

Agreements with owners of land and others for construction of works

12.—(1) The Council may enter into and carry into effect agreements or arrangements with the Port Authority, the Environment Agency and the owners of, or other persons interested in, any land in or through which any of the authorised works are or may be constructed, or the drainage of which may be affected by the construction of any of the authorised works, for or with respect to the doing of anything which may be necessary in order to carry out, or in consequence of, the authorised works.

(2) Without prejudice to the generality of paragraph (1), any such agreement may provide for—

(3) 1995 c. 21.

(4) 1975 c. 23.

- (a) the payment by the Council of, or the making of contributions by it towards, the cost incurred, or to be incurred, by the Port Authority, the Environment Agency and 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 Port Authority, the Environment Agency and any such owners or other persons by reason or in consequence of the execution by the Council of the authorised works, or entry upon land.

Temporary closing of Ouseburn in connection with works

13.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close the Ouseburn between the Low Level Bridge and the Ouseburn Culvert, or any part thereof, to navigation during or for the purposes of executing any works or doing anything authorised by or under this Order.

(2) The Council shall not exercise the powers conferred by paragraph (1) without the consent of the Port Authority (such consent not to be unreasonably withheld) and, in the exercise of those powers—

- (a) the Council shall so execute or do such works or things as to ensure that at any time no more of the Ouseburn is so closed than is reasonably necessary in all the circumstances; and
- (b) if it becomes necessary to close the Ouseburn completely to navigation, the Council shall use its best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the Ouseburn and that the minimum interference is caused to persons who may be using or intending to use the Ouseburn for the purposes of trade or business.

(3) Neither the Council nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person (save as provided in Part 1 of Schedule 6 (provisions for the protection of the Port Authority)) as a result, directly or indirectly, of any closure of the Ouseburn under paragraph (1).

(4) In the case of an emergency, the Council's powers under paragraph (1) may be exercised by the Council without the consent of the Port Authority provided that the Port Authority are informed of the action as soon as possible.

Diversion of flow of water

14. The Council may by means of the authorised works divert, intercept, stop up or otherwise interfere with the waters of, or the flow of water in, the Ouseburn.

Power to take, pump, impound and discharge water

15.—(1) The Council may take, impound and use water from, and discharge water into, the Ouseburn, and may pump any water required by it from or into the Ouseburn or pump any water found by it into the Ouseburn or into any watercourse, public sewer, or drain in connection with the construction or maintenance of the authorised works and for those purposes may lay down, take up and alter conduits, pipes and other works and conveniences and may, on any land within the limits of deviation, make openings into, and connections with, the Ouseburn, or any watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(5).

(5) 1991 c. 56.

- (3) The Council shall not, in exercise of the powers conferred by this article—
- (a) discharge any water into any public sewer or drain except with the consent (which shall not be unreasonably withheld) of the authority to which it belongs and subject to such terms and conditions as the said authority may reasonably impose;
 - (b) make any opening into any public sewer or drain except in accordance with plans reasonably approved by and under the superintendence (if provided) of the authority to which the sewer or drain belongs; or
 - (c) discharge any water into the Ouseburn or any other watercourse except with the consent (which shall not be unreasonably withheld) of the Port Authority or the authority to which it belongs and subject to such terms and conditions as the Port Authority may reasonably impose.

(4) 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⁽⁶⁾.

(5) The Council shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain in exercise of 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.

(6) In the exercise of its powers conferred by this Order the Council shall not except with the consent of Northumbrian Water (which may be given subject to such terms and conditions as Northumbrian Water may reasonably impose) move, alter or break into any public sewer, lateral drain or disposal main which is at that time vested in Northumbrian Water and shown on the sewer map maintained by Northumbrian Water in accordance with section 199 of the Water Industry Act 1991.

- (7) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority, or a joint planning board; and
 - (b) other expressions except “watercourse” used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Deposits in Ouseburn

16. Except so far as may be unavoidable in the construction of the authorised works, or in the exercise of the powers conferred by article 9 (power to dredge etc.) or article 15(1) (power to take, pump, impound and discharge water), the Council shall not, without the consent of the Environment Agency and Port Authority (which shall not be unreasonably withheld), deposit in or allow to fall or be washed into the Ouseburn any gravel, soil or other materials in the carrying out of the authorised works.

⁽⁶⁾ 1991 c. 57.