
STATUTORY INSTRUMENTS

1995 No. 519

The Barking Barrage Order 1995

PART IX

OTHER PROTECTIVE PROVISIONS

Access to barrage

68. The Borough shall at all reasonable times, upon receipt on each occasion of not less than 48 hours' written notice, afford to any duly authorised representative of the Port Authority or the River Authority or the Port Health Authority access without payment or charge to the barrage or to a tidal work for the purposes of inspection and survey of the barrage or a tidal work in connection with the exercise of the Port Authority's or the River Authority's or the Port Health Authority's functions and shall provide reasonable facilities therefor.

Saving for Trinity House

69. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of, Trinity House.

For protection of flora and fauna

70. The Borough shall consult English Nature as to measures which may be taken by the Borough to develop and, so far as may be consistent with the purposes of this Order, to conserve flora and fauna within the upstream river.

For protection of the Port Health Authority

71.—(1) Nothing in this Order shall prejudice, alter, affect or interfere with the functions, rights, liabilities, jurisdiction or authority of the Port Health Authority.

(2) Not later than 28 days before—

- (a) starting to carry out any tidal work; or
- (b) exercising any of the powers of article 7,

the Borough shall submit to the Port Health Authority plans thereof and such further particulars as may be available to the Borough and as the Port Health Authority may reasonably require in respect of carrying out such works or in exercising such powers.

(3) The Port Health Authority's vessels and those of its agents shall be entitled to pass through the barrage and use the upstream river free of charge in the exercise of the Port Health Authority's powers and duties.

For protection of Redbridge

72.—(1) If it appears to Redbridge that wholly or partly on account of the construction or operation of the barrage or the exercise by the Borough of any rights and powers granted by this

Order any part of the upstream river within Redbridge has silted up, Redbridge may serve on the Borough a notice in writing requesting the Borough to remove all or any part of the relevant siltation by dredging in accordance with article 7. On receipt of such notice the Borough may either undertake the necessary dredging or dispute the applicability or terms of the notice, in which case if the matter cannot be resolved it shall be referred to arbitration in accordance with article 80.

(2) If the Borough disputes a notice served by Redbridge in accordance with paragraph (1) it shall give written notice of such dispute to Redbridge within 28 days of receipt of the notice from Redbridge. If the Borough does not dispute the notice in such manner within 28 days, the Borough shall apply for any necessary consents in accordance with this Order or other legislation or rule of law within 42 days of the receipt of the notice from Redbridge and shall undertake any necessary consultations within the same time. The Borough shall undertake the work within 56 days of its receipt of all necessary consents provided that if any such consent has not been obtained or includes unreasonable conditions the matter shall be referred to arbitration. Following an arbitrator's ruling requiring the Borough to carry out any dredging, the Borough shall undertake such dredging within 56 days of such ruling. Any time limit indicated in this paragraph may be extended by agreement between the Borough and Redbridge.

(3) If the Borough fails to carry out any dredging which is required by paragraph (2), Redbridge shall be entitled to arrange for the necessary dredging to be carried out and to recover the reasonable cost thereof from the Borough.

(4) The Borough shall provide Redbridge with the results of any survey of the river undertaken by the Borough in accordance with this Order.

(5) The powers in this article are subject to article 74.

- (a) (6) (a) The Borough shall be responsible for and make good to Redbridge all reasonable costs, charges, damages and expenses which may be caused, directly or indirectly to, or incurred by, Redbridge by reason of the construction or operation of the barrage or by reason of the exercise by the Borough of any of the rights and powers granted by this Order.
- (b) The Borough shall indemnify and hold Redbridge harmless from and against all claims arising out of or in connection with the construction or operation of the barrage or by reason of the exercise by the Borough of the rights and powers granted by this Order.
- (c) Redbridge shall give to the Borough reasonable notice of any such claim or demand referred to in paragraph (6)(b) and no settlement or compromise thereof shall be made without the prior consent of the Borough.
- (d) Any unresolved dispute which arises between the Borough and Redbridge in relation to this paragraph or its operation shall be determined by arbitration in accordance with the provisions of article 80.

Crown rights

73.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Borough or any other person to take, use, enter upon or in any manner interfere with any land or hereditament or any rights of whatsoever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners.

(2) The powers vested in the Borough by articles 7 and 8 shall not be exercised in respect of any land in the upstream river in which there are Crown interests without the consent of the Crown Estate Commissioners.

(3) Consent under this article may be given unconditionally or subject to such terms or conditions as shall be considered necessary or appropriate.

(4) Consent under paragraph (1) or (2) shall be deemed to have been given for any work or operations on the river including surveying or monitoring, provided that:

- (a) any dredging, scouring or clearance of the river does not affect the river bed below levels to be established by survey within 28 days of commencement of the contract for construction of the barrage in accordance with article 3;
- (b) any dredging, scouring or clearance of the river shall not in any case involve the winning and working of minerals; and
- (c) if it appears to the Borough or any other person that either proviso (a) or (b) has been infringed in respect of the upstream river above Barking Millpool, that person shall inform the Crown Estate Commissioners as soon as possible.

For protection of the Railway Undertaker

74.—(1) In this article—

“the railway survey” means a survey of the railway survey area in accordance with paragraph (2);

“the railway bridges” means 2 bridges of the Railway Undertaker (Nos. 11 and 12) over the upstream river at Barking, bridge number 11 comprising 2 spans carrying respectively the London, Tilbury and Southend railway and the District Line railway of London Underground Limited and bridge number 12 carrying the Woodgrange Park to Barking railway; and

“the railway survey area” means that part of the bed of the upstream river lying beneath and between the railway bridges and extending to a distance of 10 metres downstream of the south side of bridge number 11 and 10 metres upstream of the north side of bridge number 12.

- (a) (2) (a) Before the construction of the scheduled works is commenced, the Railway Undertaker upon receipt of not less than 21 days' notice in writing from the Borough shall carry out the railway survey in consultation with the Borough with a view to establishing the levels of the river bed within the railway survey area and shall provide a copy of the results of that survey to the Borough.
- (b) The reasonable costs of the Railway Undertaker in carrying out the railway survey shall be borne by the Borough.

(3) At any time after the railway survey the Borough may clear or dredge the railway survey area to remove deposited material above the levels of the river bed as established in the railway survey provided that the Railway Undertaker is informed of such clearance or dredging and any other necessary consents are obtained.

(4) The Borough shall not without the written consent of the Railway Undertaker, such consent not to be unreasonably withheld, clear or dredge below the levels of the river bed established by the railway survey.

(5) Any unresolved matter arising from this article shall be referred to arbitration in accordance with article 80, provided that in any such reference, including cases where article 75 also applies, the arbitrator shall be an appointee of the President of the Institution of Civil Engineers.

Requirements and consents

75.—(1) In this Article “operations” means any works or operations and “consent” means any consent, permission or authorisation required in accordance with this Order or otherwise.

(2) Where a requirement for the carrying out of any operations imposed on any person by virtue of this Order cannot be complied with without the consent of any other person—

- (a) the person required to carry out the operations shall use his best endeavours to obtain such consent as soon as reasonably practicable; and

- (b) if the relevant consent is refused or the terms imposed onerous or unreasonable to any party affected by the consent—
 - (i) where such consent is required pursuant to this Order or does not involve an appeal or review procedure, then the matter shall be referred to arbitration under article 80; or
 - (ii) where such consent is not based on this Order, and the procedures governing such consents involve any appeal or review procedure, then the person required to carry out the operations shall initiate such procedures and use his best endeavours to bring about an effective adjudication of the matter including taking legal proceedings if necessary;
- (c) no obligation to carry out any operations for which consent is required or to pay for work done in default by the person who has required operations to be done pursuant to this Order shall arise pending the grant of any necessary consent or adjudication of any relevant appeal, review, arbitration or litigation or if on such adjudication consent is refused.