

1999 No. 403

HARBOURS, DOCKS, PIERS AND FERRIES

The Poole Harbour Revision Order 1999

Made - - - - *16th February 1999*

Coming into force *2nd March 1999*

Whereas The Poole Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a):

And whereas there were objections made to the application which were not withdrawn, and an inquiry was held in accordance with paragraph 4(3) of Schedule 3 to the said Act(b);

And whereas the Secretary of State for the Environment, Transport and the Regions has considered the objections made and not withdrawn and the report of the person holding the inquiry;

And whereas the Secretary of State has, on pursuance of sub-paragraph (4) of paragraph A2 of Schedule 3 to the said Act(c) notified the Commissioners that the application is not one to which the provisions of sub-paragraph (3) of that paragraph apply;

And whereas the Secretary of State is satisfied as mentioned in subsection (2)(b) of the said section 14:

Now, therefore, the Secretary of State (being the appropriate Minister under subsection (7) of the said section 14(d)), in exercise of the powers conferred by that section and now vested in him(e), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1.—(1) This Order may be cited as the Poole Harbour Revision Order 1999 and shall come into force on 2nd March 1999.

(2) The Poole Harbour Acts and Orders 1756 to 1981 and this Order may be cited together as the Poole Harbour Acts and Orders 1756 to 1999.

Interpretation

2.—(1) In this Order—

“the new breakwater” means the new breakwater authorised by article 3 below;

“the Commissioners” means The Poole Harbour Commissioners;

“the deposited plan” and “the deposited sections” mean respectively the plan and sections prepared in duplicate, signed by the Head of Ports Division in the Department of the

(a) 1964 c. 40: section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

(b) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10.

(c) Paragraph A2 was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I. 1996/1946), regulation 2.

(d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).

(e) S.I. 1981/238 and S.I. 1997/2971.

Environment, Transport and the Regions and marked “Plan and sections referred to in the Poole Harbour Revision Order 1999” one copy of which is deposited at the Department and the other at the principal office of the Commissioners;

“the existing breakwater” means the existing breakwater shown on the deposited plan protecting the Fishermen’s Dock;

“the harbour” means the harbour as defined in sections 3 (Interpretation) and 4 (Limits of harbour) of the Poole Harbour Act 1914(a);

“the harbour master” means the harbour master appointed by the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act as harbour master;

“the level of highwater” means the level of mean high-water springs;

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

“reference point” means Ordnance Survey National Grid reference point;

“the temporary causeway” means the temporary causeway authorised by article 4 below;

“tidal works” means so much of any of the works as are on, under or over tidal waters;

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

“the works” means the works authorised by this Order.

(2) All directions, distances, points and dimensions stated in any description of works, and the level of the new breakwater indicated on the deposited sections, shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, point, dimension, or such level.

Power to construct works

3.—(1) Subject to the provisions of this Order the Commissioners may, for the purpose of providing a new boat haven in the harbour—

- (a) within the lines and situation and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections construct and maintain a rubble mound breakwater (with rock armour protection) commencing at reference point 401601 090149, extending in a south-westerly and then a westerly direction for a distance of 473 metres and terminating in a T-shaped structure (partly constructed with steel piling), extending from reference point 401138 090206 to reference point 401138 090087; and
- (b) within the limits of deviation and on the northern side of the new breakwater construct and maintain such berthing facilities as the Commissioners may from time to time think fit.

(2) The Commissioners may, within the limits of deviation, from time to time alter, replace or reconstruct temporarily or permanently the works.

Power to make subsidiary and accommodation works

4.—(1) The Commissioners may:—

- (a) from time to time construct, place and maintain within the limits of deviation all such works, conveniences, appliances and apparatus as they from time to time deem necessary or expedient for the purposes of or in connection with or incidental to the construction, maintenance and use of the works authorised by article 3 above and the accommodation of vessels thereat, including, without prejudice to the generality of the foregoing, the removal of the existing breakwater and the alteration or reconstruction of existing quay or sea walls to accommodate the works;
- (b) for the purpose of obtaining access to construct the new breakwater, construct and maintain within the lines and situation and within the limits of deviation shown on the deposited plan a temporary causeway between the southern end of Green Gardens and the site of the new breakwater; and

(a) 1914 c. clv.

- (c) in the course of constructing, replacing, altering or reconstructing the works carry out construction activity, including the temporary placing of plant and equipment, within the waters adjoining the limits of deviation.

(2) On the completion of the new breakwater the Commissioners shall remove the temporary causeway.

Power to deviate

5. In constructing the new breakwater and the temporary causeway the Commissioners may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may deviate vertically from the levels of the new breakwater shown on the deposited sections to such extent downwards as may be found necessary or convenient.

Power to dredge

6.—(1) The Commissioners may from time to time deepen, dredge, scour, cleanse and improve the harbour for the purpose of the accommodation of vessels at the works, for affording access thereto or for the purpose of constructing or maintaining the works.

(2) Subject to paragraph (3) below, all materials dredged up or removed by the Commissioners in exercise of the powers of this article (other than wrecks within the meaning of Part IX of the Merchant Shipping Act 1995(a)) shall be the property of the Commissioners and may be used, sold, deposited or otherwise disposed of as the Commissioners think fit.

(3) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Fine for obstructing works

7. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Commissioners as a debt any expenses incurred by them in making good any damage resulting from such obstruction, moving or removal.

Works to be deemed part of harbour undertaking

8. The works shall be deemed for all purposes to be part of the harbour undertaking authorised by the Poole Harbour Acts and Orders 1756 to 1981 and all byelaws, rules and regulations of the Commissioners for the time being in force relating to that harbour undertaking shall apply to the works and may be enforced by the Commissioners accordingly.

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

9.—(1) A tidal work (including any berthing facilities provided under article 3(1)(b) above) shall not be constructed, altered, enlarged, replaced, relaid, extended 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, enlarged, replaced, relaid, extended 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 Commissioners 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 30 days from the date when the notice is served upon the Commissioners they 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 Commissioners.

(a) 1995 c. 21.

Provision against danger to navigation

10.—(1) In case of injury to, or destruction or decay of, a tidal work or any part thereof, the Commissioners shall as soon as 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 without reasonable excuse the Commissioners fail to notify Trinity House as required by paragraph (1) above of this article or to comply in any respect with a direction given under the said paragraph, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

11.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their 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 the Secretary of State thinks proper.

(2) Where 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 that part of the work on or over land above the level of high water is in such 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 paragraph (1) above.

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) above is served upon the Commissioners, 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 the Secretary of State in so doing shall be recoverable from the Commissioners.

Survey of tidal works

12. 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 the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Commissioners.

Permanent lights on tidal works

13.—(1) After the completion of a tidal work the Commissioners shall at the outer extremity 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 shall from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1) above, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for the Commissioners to prove that all due diligence was used to secure compliance with the direction.

Lights on tidal works during construction

14.—(1) The Commissioners shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension 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 Commissioners fail to comply in any respect with a direction given under paragraph (1) above they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for the Commissioners to prove that all due diligence was used to secure compliance with the direction.

Power to appropriate lands and works for particular trades etc.

15.—(1) The Commissioners may from time to time set apart and appropriate any part of the harbour on the northern side of the new breakwater for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods subject to the payment of such charges and to such terms, conditions and regulations as the Commissioners may think fit.

(2) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Commissioners; and—

- (a) the harbour master or, as the case may be, such officer, may order any person or vessel making use thereof without such consent to leave or be removed; and
- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Harbours, Docks and Piers Clauses Act 1847^(a) shall extend and apply mutatis mutandis to and in relation to any such vessel.

(3) Any person or the master of any vessel, who fails without reasonable excuse to comply with an order of the harbour master under paragraph (2)(a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Saving for town and country planning

16. The works shall not for the purposes of the Town and Country Planning General Permitted Development Order 1995^(b) be treated as—

- (a) development authorised by an order made under section 14 of the Harbours Act 1964 which designates specifically the nature of the development authorised and the land upon which it may be carried out; or
- (b) development on operational land by statutory undertakers or their lessees in respect of a dock, pier or harbour undertaking, being development which is required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour.

Crown rights

17.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Commissioners to take, use, enter upon or in any manner interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

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

Glenda Jackson
Parliamentary Under-Secretary of State,
Department of the Environment,
Transport and the Regions

16th February 1999

(a) 1847 c. 27.

(b) S.I. 1995/418.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on the Poole Harbour Commissioners in connection with the construction and management of a new boat haven adjoining the Town Quay, including powers to construct (subject to obtaining planning permission) a new breakwater and berthing facilities and to remove the existing breakwater.

£2.00

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