

1993 No. 2176

HARBOURS, DOCKS, PIERS AND FERRIES

The St. Ives Harbour Revision Order 1993 ✓

Made - - - - - 6th September 1993

Coming into force 27th September 1993

Whereas an application for an Order under section 14 of the Harbours Act 1964(a) was made to the Minister of Agriculture, Fisheries and Food by Penwith District Council, being the harbour authority engaged in improving, maintaining and managing the harbour of St. Ives;

And whereas the said Council caused a draft of the Order as applied for to the said Minister to be published, and gave notice of the application, in accordance with paragraph 3 of Schedule 3 to the said Act;

And whereas the said Minister, objections to the application having been duly made to him and not having been withdrawn, caused an inquiry to be held in relation thereto in accordance with paragraph 4 to the said Schedule;

And whereas the said Minister, having considered the said objections made and not withdrawn and the report of the person who held the said inquiry, is satisfied in accordance with section 14(2)(b) of the said Act that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the said harbour in an efficient and economical manner;

Now, therefore, the said Minister, in exercise of the power conferred on him by the said section 14 and of all other powers enabling him in that behalf, hereby makes the following Order:

**Title and commencement**

1.—(1) This Order may be cited as the St. Ives Harbour Revision Order 1993 and shall come into force on 27th September 1993.

(2) The St. Ives Harbour Act 1853(b), the St. Ives Harbour Order 1862(e), the St. Ives Harbour Order 1886(d), the St. Ives Harbour Order 1888(e), the St Ives Harbour Revision Order 1980(f) and this Order may be cited together as the St. Ives Harbour Act and Orders 1853 to 1993.

(a) 1964 c.40; section 14 was amended by sections 36(2) and (4) and 43(3) of the Docks and Harbours Act 1966 (c.28), paragraphs 2, 3, 4 and 14 of Schedule 6 to the Transport Act 1981 (c.56), section 46 of the Criminal Justice Act 1982 (c.48) and paragraph 1 of Schedule 3 to the Transport and Works Act 1992 (c.42).

(b) 1853 c.cxxix.

(c) 1862 c.51.

(d) 1886 c.ix.

(e) 1888 c.cxix.

(f) S.I. 1980/115.

## Interpretation

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

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(a);

“the Council” means the Penwith District Council;

“the deposited plan” and the “deposited sections” mean the plan and sections prepared in triplicate, signed by an Assistant Secretary of the Ministry of Agriculture, Fisheries and Food and marked “Plan and sections referred to in the St. Ives Harbour Revision Order 1993” of which one copy is deposited at the Ministry of Agriculture, Fisheries and Food, one copy at the Department of Transport and one copy at the offices of the Council;

“enactment” means any enactment, whether public, general or local, and includes any Order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the harbour” means the harbour of St. Ives within the limits described in article 12 of the St. Ives Harbour Order 1886 and includes any land or property within those limits belonging to the Council;

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

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

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“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 high water;

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

“the undertaking” means the harbour undertaking of the Council as from time to time authorised by any enactment;

“the works” means the works authorised by article 4 (Power to construct works) and described in article 5 (Description of works) of this Order or either of them and any works constructed under article 7 (Subsidiary works) of this Order or any part of the said works and includes those works as renewed, extended, enlarged, altered or otherwise as provided under article 8 (Alteration and improvement of works) of this Order.

## Incorporation of provisions of the Act of 1847

3.—(1) The provisions of the Act of 1847 (except sections 6 to 13, 16 to 19, 23, 25, 27, 31 to 33, 48, 49, 50, 66, 67, 79 to 82, 84 to 90, 94, 95, 97 to 99, 101 and 102) are hereby incorporated with this Order, except as expressly varied hereby, and in construing those provisions:

- (a) the expression “the special Act” shall mean this Order and the expression “the undertakers” shall mean the Council;
- (b) section 15 of the Act of 1847 as incorporated with this Order shall have effect as if the words from “shall forfeit” to the end of the section were deleted and there were substituted therefor the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
- (c) section 20 of the Act of 1847 as incorporated with this Order shall have effect as if the words “in addition to the lands authorised to be compulsorily taken by them under the powers of the special Act” were omitted and as if the words “or lease” were inserted after the words “willing to sell” and the words “for the purchase”;
- (d) section 52 of the Act of 1847 in its application to the harbour and the harbour master shall empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (e) section 53 of the Act of 1847 shall not be construed as requiring the harbour master to serve a notice in writing of his directions upon the master of a vessel but such directions may be given orally or otherwise communicated to such master;
- (f) section 63 of the Act of 1847 shall be read and have effect as if for the words from

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(a) 1847 c.27.

"to a penalty" to the end of the section there were substituted the words "on summary conviction to a fine not exceeding level 3 on the standard scale";

- (g) section 69 of the Act of 1847 shall have effect as if for the words from "shall forfeit" to the end of the section there were substituted the words "shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale".
- (2)(a) For the purposes of section 83 of the Act of 1847 as incorporated with this Order sections 236 to 238 of the Local Government Act 1972(a) shall apply to this Order as if it were such an enactment as is referred to in section 236(1) of the said Act of 1972, and—
- (i) for the purposes of section 236(11) of the said Act of 1972 the confirming authority for byelaws as made under the said section 83 shall be the Minister, and
  - (ii) the said section 236 shall have effect as if in subsection (7) thereof after the word "confirm" where it first occurs in the subsection the words "with or without modification" were inserted.
- (b) If the Minister, on considering byelaws made by the Council and submitted under the said section 236 as having effect in accordance with paragraph (a) above, proposes to make any modification to them, he shall inform the Council and require the Council to take any steps he considers necessary for informing persons likely to be concerned with the modification and shall not confirm the byelaws without the consent of the Council to the modification and until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the modification by the persons who have been informed of it.

#### Power to construct works

4. Subject to the provisions of this Order, the Council may, in the lines and situations shown on the deposited plan and on the levels shown on the deposited sections, when they have acquired the necessary lands or obtained sufficient interests therein and within the limits of deviation, construct and maintain the works.

#### Description of works

5.—(1) The works authorised by this Order are the following works in the Parish of St. Ives in the District of Penwith in the County of Cornwall—

**Work No. 1.** A boathouse and public toilets to the south of West Pier to be constructed on land forming part of the Pier to be reclaimed and filled in for that purpose extending for 24 metres to the south of the Pier with a width of 18 metres or thereabouts.

**Work No. 2.** A launchway to the east of Wharf Road and extending for 56 metres into the bed and foreshore of the harbour, the breadth of the launchway being 13 metres or thereabouts.

(2) The works shall for all purposes form part of the undertaking.

#### Powers to cease in certain events

6.—(1) If the works are not substantially commenced within ten years from the coming into force of this Order the powers conferred on the Council by article 4 (Power to construct works) of this Order shall cease.

(2) If the execution of any of the works after having been substantially commenced is suspended or virtually suspended for twelve consecutive months the said powers in respect of that work shall cease.

(3) A certificate of the Minister to the effect that the works have not been substantially commenced, or that the works, having been substantially commenced, have been suspended or virtually suspended for twelve consecutive months, shall for the purposes of this article be conclusive evidence of the facts stated in such certificate.

7.—(1) Subject to the provisions of this Order the Council may from time to time erect, construct, operate, maintain and temporarily or permanently repair all such works and conveniences as in the opinion of the Council may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works including--

- (a) the reconstruction of the existing quay wall to accommodate the Boathouse (Work No. 1), and
- (b) new kerbing and pathways and making good existing kerbing and pathways in connection with the launchway (Work No. 2),

but no such permanent works or conveniences shall be erected or constructed outside the limits of deviation.

(2) On the completion of the works the Council shall remove all temporary works placed by them under the powers of this article on, under or over land below the level of high water.

#### Alteration and improvement of works

8. Subject to the provisions of this Order, the Council may from time to time maintain, renew, extend, enlarge, improve and alter the works but nothing in this article shall authorise the Council to deviate laterally beyond the limits of deviation authorised by article 10 (Power to deviate) of this Order.

#### Power to dredge

9.—(1) Subject to the provisions of this Order the Council may from time to time deepen, dredge, scour, cleanse, alter and improve the harbour for the purpose of affording uninterrupted means of access to the works or the accommodation of vessels thereat.

(2) Subject to sub-paragraph (3) below, the Council may use, appropriate or dispose of any material (other than a wreck within the meaning of Part IX of the Merchant Shipping Act 1894)(a) from time to time dredged by them from the harbour.

(3) No materials of the kind described in sub-paragraph (2) above shall be deposited below the level of high water otherwise than in such a position and under such conditions or restrictions as may be approved or prescribed by the Minister, and nothing in section 73 of the Act of 1847, as incorporated with this Order, shall apply to any deposit in accordance with this sub-paragraph.

#### Power to deviate

10. Subject to the provisions of this Order, the Council in constructing the works may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited sections upwards or downwards to any extent.

#### Fine for obstruction or for interference with demarcation of works

11. Any person who intentionally obstructs any person acting under the authority of the Council 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.

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

12.—(1) A tidal work shall not be erected, constructed, renewed, extended, enlarged, improved or altered except in accordance with plans and sections approved by the Secre-

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(a) 1894 c.60.

tary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is erected, constructed, renewed, extended, enlarged or altered 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 thirty days from the date when the notice 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; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may himself 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.

#### **Provision against danger to navigation**

13.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Council 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) Subject to the provisions of article 18 (Defence of due diligence) of this Order, 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 the statutory maximum and on conviction on indictment to a fine.

#### **Abatement of works abandoned or decayed**

14.—(1) Where a tidal work is abandoned, or allowed 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 works 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 authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed 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 under this article.

(3) If, on the expiration of thirty 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 recoverable from the Council.

#### **Survey of tidal works**

15. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Council 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 Council.

#### **Lights on tidal works during construction**

16.—(1) The Council shall at or near a tidal work during the whole time of the erection, construction, renewal, extension, enlargement, improvement or alteration 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) Subject to the provisions of article 18 (Defence of due diligence) of this Order, if the Council fail 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 the statutory maximum and on conviction on indictment to a fine.

#### **Permanent lights on tidal works**

17.—(1) After the completion of a tidal work, the Council 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) Subject to the provisions of article 18 (Defence of due diligence) of this Order, if the Council fail 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 the statutory maximum and on conviction on indictment to a fine.

#### **Defence of due diligence**

18.—(1) In any proceedings for an offence under articles 13, 16 and 17 of this Order (as the case may be), 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 such an offence.

(2) If in any case the defence made under paragraph (1) of this article involves an allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without the leave of the court, be entitled to rely on that defence unless, within a period ending seven clear 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.

#### **Power to Lease etc.**

19. The Council may lease or grant for harbour purposes the use or occupation of, or any right of interest in, or over, any lands, works, buildings, equipment or other property forming part of the works for such period or periods and on such terms and conditions as shall be agreed between the Council and the person taking the same.

#### **Protection of South West Water Services Limited**

20.—(1) The provisions of this article shall have effect for the protection of South West Water Services Limited (in this article referred to as "the company"), unless otherwise agreed in writing between the Council and the company.

(2)(a) Before commencing the construction of any specified work which may adversely affect any apparatus the Council at their own expense shall secure, subject to the consent of the National Rivers Authority, the removal, relocation, alteration or improvement of any apparatus to the satisfaction of the company;

(b) any works carried out by the Council under sub-paragraph (a) above shall be carried out to the reasonable satisfaction of the company in accordance with plans approved by them under paragraph (3) below;

(c) the Council and the company may agree that any such works shall be carried out by the company at the expense of the Council.

(3)(a) Subject to sub-paragraph (b) below, before commencing the construction of any specified work the Council shall submit plans of such work to the company for their approval, which shall not be unreasonably withheld, and shall not commence such construction until such plans have been approved by the company;

(b) if the company do not within 56 days after the receipt of any such plans (or such shorter period as may be agreed by the company having regard to prior consultation as to the plans) signify to the Council their disapproval, and the grounds for their disapproval, of such plans they shall be deemed to have approved them;

(c) in the case of any specified work carried out in an emergency the Council shall not be required to submit plans before commencing that work but shall give to the company such notice and such particulars as may be practicable in the circumstances before the work is commenced, with further particulars and plans as soon as reasonably practicable thereafter; and

(d) the Council shall indemnify the company against all costs, charges and expenses which the company may reasonably incur or have to pay or which they may sustain in the examination or approval of plans.

(4) Upon signifying their approval of the plans of any specified work, or considering notice of any specified work carried out in an emergency, the company may specify any steps which shall be taken by the Council in the carrying out of the work, being steps reasonably required for the protection of any apparatus and for ensuring access by the company to such apparatus, having regard to any removal, relocation, alteration or improvement carried out under paragraph (2) above.

(5)(a) Subject to the provisions of this article, a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved or settled under paragraph (3) above and in accordance with any requirement made by the company under paragraph (4) above or settled by arbitration and shall be constructed in accordance with those plans and any such requirements to the reasonable satisfaction of the company who shall be given reasonable notice of the date and time on and at which the work is to be commenced; and

(b) the Council shall at all reasonable times afford to the company and their duly authorised representatives access to such specified work for the purpose of inspection.

(6) If by reason of the carrying out by the Council of any specified works any apparatus is damaged or its efficiency for sewerage or water supply purposes is impaired, and the company take such steps as are reasonable—

(a) to make good the apparatus and restore it to its former standard of efficiency; or

(b) where necessary, to construct some other work in substitution for the apparatus, they may recover from the Council the reasonable cost of so doing and any such cost of executing works needed for remedying any subsidence of the substituted work during such reasonable period as may be agreed between the Council and the company.

(7) If the company have reasonable grounds for believing that the apparatus is likely to be damaged or the efficiency of the apparatus for sewerage or water supply purposes is likely to be impaired by reason of the carrying out by the Council of any specified works, they may carry out such protective works as may be agreed between them and the Council or as, failing agreement, may be settled by arbitration in accordance with paragraph (13) below, and recover the reasonable cost of such works from the Council.

(8) If, in consequence of the construction of the specified works or any dredging in the harbour, the operation of any outfall or sewer is impaired or adversely affected by reason of siltation or scouring, the Council shall carry out such dredging or other works as may be required to secure the effective discharge of effluent and, if they fail to do so within such time as may reasonably be required for the purpose after notice in writing from the company, the company may carry out any necessary work and recover from the Council all costs reasonably incurred by them in so doing.

(9) The Council shall repay to the company any additional expenditure reasonably incurred by the company in respect of the maintenance or operation of any apparatus affected by the exercise of the powers of this Order and they may comply with the requirements of this paragraph by making a payment of a sum to be agreed or, failing agreement, settled by arbitration in accordance with paragraph (13) below.

(10)(a) Subject to sub-paragraph (b) below the Council shall indemnify and hold harmless the company from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage to any apparatus which may be caused by or result from the construction of any specified work or of the failure or want of repair of any apparatus or any act of omission of the Council, their contractors, agents, workmen or servants whilst engaged upon the work or upon any dredging in the harbour;

(b) the company shall give to the Council reasonable notice of any such claim or demand and no settlement or compromise of such claim or demand shall be made without the agreement of the Council.

(11) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the company or to their satisfaction or in accordance with any directions or award of any arbitrator shall not relieve the Council from any liability under the provisions of this article.

(12) Costs recoverable by the company from the Council under this section may include a proper proportion of the overhead charges of the company.

(13) Any difference arising between the Council and the company under this article (other than a difference as to the construction of this article) shall be determined by a single arbitrator to be agreed between the parties or, in default of 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.

(14) In this article—

“apparatus” means any sewers, mains, pipes or other apparatus vested in the company or under their management and control;

“construction” includes execution and placing, extension, enlargement, alteration, replacement or re-laying and “construct” and “constructed” shall be construed accordingly;

“plans” includes descriptions, drawings and particulars;

“specified work” means any of the works which will or may be situated within 15 metres measured in any direction of any apparatus or which may otherwise affect any apparatus.

### Crown rights

21.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown (including, without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall, the Duchy of Cornwall), and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Council to take, use, enter upon or in any manner interfere with any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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 or enjoyed by the Duchy of Cornwall or the possessor for the time being of the Duchy without the consent in writing of two or more of such of the regular officers of the said Duchy or of such other persons as may be duly authorised under section 39 of the Duchy of Cornwall Management Act 1863(a) or, as the case may be, the consent of the Duke of Cornwall testified in writing under the seal of the said Duchy; or
- (c) 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 shall be considered necessary or appropriate.

### Saving for Trinity House

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

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 6th September 1993.



*Gillian Shephard*  
Minister of Agriculture, Fisheries and Food

(a) 1863 c.49.



## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order enables the Penwith District Council to—

- (a) provide a boathouse and public toilets on land adjoining the West Pier St. Ives for the accommodation of the St. Ives lifeboat, and
- (b) provide a launchway for the lifeboat to the east of Wharf Road and extending into the bed and foreshore of St. Ives Harbour.

The applicants for this Order are the Penwith District Council ("the Council").

The deposited plan and deposited sections referred to in articles 2, 4 and 10 of the Order may be inspected at any of the following addresses—

Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR;

Penwith District Council, St. Clare, Penzance, Cornwall TR18 3QW;

Department of Transport, Hampton House, 20 Albert Embankment, London SE1 7TJ.

Offences and penalties of obstruction or interference with demarcation of the works, of failure by the Council to notify Trinity House in case of injury etc to the tidal works and of failure by the Council to comply with a direction by the Secretary of State as to steps for the prevention of danger to navigation both during construction and after completion of the tidal works are contained in article 11, article 13(2) and articles 16(2) and 17(2) respectively.

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HARBOURS, DOCKS, PIERS AND FERRIES

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