

2000 No. 2103

HARBOURS, DOCKS, PIERS AND FERRIES

**The Portsmouth (Tall Ships Berths) Harbour Revision Order
2000**

Made - - - - - *31st July 2000*

Coming into force - - - - - *1st August 2000*

Whereas Portsmouth City Council has applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas Portsmouth City Council, having under paragraph 3 of Schedule 6 to that Act(b) given the Secretary of State for the Environment, Transport and the Regions notice of its intention to make that application, has been informed under paragraph 6 of that Schedule that the application relates to a project which falls within Annex II to the Council Directive No. 85/337/EEC(c) on the assessment of the effects of certain public and private projects on the environment and is a relevant project for the purposes of that Schedule;

And whereas Portsmouth City Council has complied with any direction given by the Secretary of State under paragraph 8(1) of Schedule 3 to that Act and with any relevant requirements of paragraphs 10 to 14 of that Schedule;

And whereas the Secretary of State has under paragraph 15 of Schedule 3 to that Act consulted and sent any environmental statement supplied to him under paragraph 8(1) of that Schedule to such bodies likely to have an interest in the project by reason of their environmental responsibilities as he thinks appropriate;

And whereas objections duly made to the Secretary of State pursuant to paragraph 10 of Schedule 3 to that Act have been withdrawn;

And whereas the Secretary of State is satisfied as is mentioned in section 14(2)(b) of that Act;

Now therefore, the Secretary of State for the Environment, Transport and the Regions (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 make the following Order:

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- (a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 2 to 4 and 14 and Schedule 12, Part II, by the Criminal Justice Act 1982 (c. 48), section 46 and by the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3, paragraph 1.
- (b) Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445).
- (c) O.J. No. L 175, 5.7.85, p. 40, amended by Council Directive 97/11/EC (O.J. No. L 73, 14.3.97, p. 5).
- (d) For the definition of "the Minister" (mentioned in Section 14(7)), see Section 57(1).
- (e) S.I. 1981/238; S.I. 1997/2971.

Citation and commencement

1. This Order may be cited as the Portsmouth (Tall Ships Berths) Harbour Revision Order 2000 and shall come into force on 1st August 2000.

Interpretation

2.—(1) In this Order—

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

“the authorised works” means all or any of the works authorised by this Order or any part of those works, and where any part of those works remain uncompleted, includes the site thereof;

“the City Council” means the Portsmouth City Council;

“deposited plan” and “deposited sections” means the plan and sections drawn on one sheet of paper prepared in duplicate signed by an Assistant Secretary in the Department of the Environment, Transport and the Regions and marked “Plan and Sections referred to in the Portsmouth (Tall Ships Berths) Harbour Revision Order 2000”, of which one copy of the plan and sections drawing is deposited at the offices of the Department of the Environment, Transport and the Regions and one at the offices of the Director of Corporate Services of the City Council;

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

“Harbour Master” means the Harbour Master or other duly authorised officer or manager appointed from time to time by the City 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;

“Queen’s Harbour Master” means the person for the time being appointed to be Queen’s Harbour Master of the Dockyard Port of Portsmouth under the Dockyard Ports Regulation Act 1865(b);

“the Special Protection Area” means the area north of the mean low water mark and seaward of Burrow Island, Foxbury Point, Portchester, Horsea Island and Whale Island ending to the south of Whale Island as classified pursuant to Article 4(1) or (2) of Council Directive 79/409/EEC(c) on the conservation of wild birds;

“the Tall Ships Berths” means the berths and pontoons to be constructed at Gunwharf Quays, Portsmouth, as part of the authorised works;

“tidal work” means so much of the authorised works as is on, under or over any part of the seashore lying below the level of high water;

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

“vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

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

Incorporation of Act of 1847

3.—(1) Subject to paragraph (2) below, the Act of 1847 (except sections 6 to 13, 16 to 20, 23, 25 to 27, 31, 48, 49, 50, 67, 79 to 82, 84 to 90, 95, 97 and 98 and so much of the proviso to section 83 as follows the words “the special Act”), so far as the same is applicable for the purposes of and is not inconsistent with, or varied by, the provisions of this Order, is hereby incorporated with this Order.

(2) In the Act of 1847 so incorporated—

(a) 1847 c. 27.

(b) 1865 c. 125.

(c) O.J. No. L 103, 25.4.79, p. 1.

- (a) section 15 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 2 on the standard scale”;
- (b) section 34 of the Act of 1847 shall have effect as if, after the word “may”, there were inserted the words “(on producing, if so required, a duly authenticated document showing his authority)”;
- (c) section 63 of the Act of 1847 shall have effect as if the words “and a further sum of twenty shillings for every hour that such vessel shall remain within the limits aforesaid, after a reasonable time for removing the same has expired after such requisition” were omitted; and
- (d) 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”.

(3) In the construction of the Act of 1847 as so incorporated the expression “the special Act” shall mean this Order and the expression “vessel” shall have the meaning assigned to it by Article 2(1) of this Order.

(4) For the purposes of section 83 of the Act of 1847 as so incorporated, section 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 the said section 236, and:

- (a) for the purposes of the said section 236 the confirming authority for byelaws made under the said section 83 shall be the Secretary of State for the Environment, Transport and the Regions; and
- (b) the said section 236 shall have effect as if in subsection (7) thereof after the word “confirm” where it first occurs the words “with or without modification” were inserted.

(5) If the Secretary of State, on considering byelaws relating to the Tall Ships Berths made by the City Council and submitted under the said section 236 as having effect in accordance with paragraph (4) above, proposes to make a modification which appears to him to be substantial, then—

- (a) he shall inform the City Council as appropriate and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification; and
- (b) he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the City Council and other persons who have been informed of the proposed modification to consider and comment on it.

Power to construct works

4.—(1) Subject to the provisions of this Order, the City Council (or others acting on their behalf) may, when they have acquired the necessary lands or obtained sufficient interests therein, make and maintain the following works in the City of Portsmouth:

- (a) a series of free floating pontoons, one section measuring six metres in width and of a total length of two hundred and fifteen metres, a second section measuring two-and-a-half metres in width and of a total length of one hundred and ninety metres and a third section measuring eight metres in width and of a total length of twenty metres to form ship berths and walkways positioned adjacent to and west of Gunwharf Quays and secured in place by mooring dolphins.
- (b) A pedestrian gangway thirty-five metres long and two-and-a-half metres wide extending out from a structural platform to be constructed on the western face of the Gunwharf Quay wall.
- (c) A disabled passenger and equipment hoist installed at the northern end of the Tall Ships Berths and fixed to the face of the Gunwharf quay wall.

(2) The works described in paragraph (1) shall be carried out within an area of land enclosed by the limit of deviation formed by the south western Gunwharf quay wall between 50° 47.693 N of latitude, 1° 6.402 W of longitude(b) and 50° 47.645 N of latitude, 1° 6.343 W of longitude

(a) 1972 c. 70.

(b) Ordnance Survey of Great Britain (1936) Datum.

thence by an imaginary line in a south westerly direction for a distance of seventy three metres to 50° 47.632 N of latitude, 1° 6.400 W of longitude thence in a south easterly direction for a distance of fifteen metres to 50° 47.623 N of latitude, 1° 6.395 W of longitude thence generally following the line of the existing quay in a southerly direction to 50° 47.597 N of latitude, 1° 6.409 W of longitude thence by an imaginary line in a north westerly direction to 50° 47.605 N of latitude, 1° 6.436 W of longitude thence in a south to north line to 50° 47.704 N of latitude, 1° 6.454 W of longitude thence in a west to east line to 50° 47.706 N of latitude, 1° 6.438 W of longitude thence generally following the outer edge of the future quay that forms the line of the proposed Gunwharf Quay development quayside back to the point of commencement and within the limits of deviation.

(3) The City Council may within the limits of deviation, and subject to paragraph (5) below, extend, enlarge, alter, replace or relay the authorised works.

(4) The City Council may authorise any person to carry out the authorised works.

(5) The City Council or other person authorised to carry out the works shall not carry out any works permitted under paragraph (3) above which are reasonably likely (either alone or in combination with other works) to affect the Special Protection Area without first obtaining the consent of the Secretary of State.

Power to Deviate

5. In constructing the authorised works the City Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may divert vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to such extent downwards as may be found necessary or convenient.

Further powers as to works

6. Subject to the provisions of this Order, the City Council or other authorised person to carry out the works may, in connection within the construction of the authorised works, enclose and reclaim from the foreshore and bed of the sea, and may hold and use as part of the Tall Ships Berths so much of the foreshore and bed of the sea as is situated within the limits of deviation and is required for, or in connection with, the construction of the authorised works.

Subsidiary works

7.—(1) Subject to paragraphs (2) and (3) below and to the other provisions of this order, the City Council or others authorised to carry out the works may, in connection with the authorised works and within the limits of deviation, construct, erect, lay down, place, maintain, remove, replace, work or use all necessary or convenient bridges, abutments, booms, pontoons, fenders, bollards, ladders, tanks, pumps, conduits, pipes, wires, mains, cables, rails, signals, conveyors, cranes, lifts, hoists, passenger side loaders, drops, weighbridges, stairs, stages, platforms, catwalks, landing places, dolphins, piles, buoys, moorings, beacons, approaches, buildings, sheds, offices, depots, roads, walls, fences, gates, equipment, machinery and appliances and such other works and apparatus as they think fit.

(2) Electrical works, mechanical works or equipment constructed, erected, laid down, or placed or maintained, worked or used pursuant to the powers conferred by this article shall be so constructed, erected, laid down or placed, and so maintained, worked or used, that any electricity generated or conveyed by any such works or equipment used therein or in connection therewith does not cause interference (whether by induction or otherwise) with any telecommunications apparatus or with telecommunication by means of any such apparatus.

(3) The City Council or other person authorised to carry out the works shall not carry out any works permitted under paragraph (1) above which are reasonably likely (either alone or in combination with other works) to affect the Special Protection Area without first obtaining the consent of the Secretary of State.

Power to appropriate lands and works for particular trades etc.

8.—(1) Notwithstanding anything in any statutory provision of local application the City Council or others authorised to manage the Tall Ships Berths may from time to time for the purpose of or in connection with the management of the Tall Ships Berths set apart and appropriate all or any part of the Tall Ships Berths 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 subject to such terms, conditions and regulations as the City Council may think fit.

(2) No person or vessel shall make use of any part of the Tall Ships Berths so set apart or appropriated without the consent of the Harbour Master or other duly authorised officer or manager and the Harbour Master or, as the case may be, such officer or manager may order any person or vessel making use thereof without such consent to leave or be removed and the provisions of section 58 (Powers of Harbour Master as to mooring of vessels in harbour) of the 1847 Act shall extend and apply mutatis mutandis to and in relation to any such vessels.

Jurisdiction and directions of Harbour Master

9.—(1) Subject to paragraph (2) below the limits within which the powers of the Harbour Master or other duly authorised officer or manager may be exercised under and subject to the provisions of the Act of 1847 as incorporated with this Order and all other powers enabling him in that behalf shall extend to a distance of one-hundred metres seawards from the authorised works in respect of the Tall Ships Berths.

(2) The powers exercisable by virtue of this article shall be limited to vessels going to, moored at, or departing from the authorised works.

(3) Section 52 of the Act of 1847 as incorporated with this order shall extend to empower the Harbour Master or other duly authorised officer or manager to give directions prohibiting the mooring of vessels in or near to any approach to the authorised works.

(4) In the case of conflict between any direction given by the Harbour Master and any direction given by the Queen's Harbour Master, the directions given by the Queen's Harbour Master shall prevail.

Recovery of rates in respect of vessels

10. In addition to the remedy given by section 44 of the Act of 1847 as incorporated with this Order (recovery of rates in respect of vessels by distraint and sale of the vessel and its tackle), and whether or not the collector of rates has gone on board the vessel and demanded any rates which the master of the vessel has neglected or refused to pay, the City Council or other duly authorised officer or manager may recover such rates as a debt in any court of competent jurisdiction.

Harbour Master may prevent sailing of vessels

11. The Harbour Master or other duly authorised officer or manager may prevent the removal or sailing from the authorised works of any vessel until evidence has been produced to him of the payment of any ship, passenger and goods dues and other charges payable in respect of the vessel or of passengers thereon or of the goods imported or exported therein.

Power to dredge etc.

12.—(1) The City Council may with the consent of the Queen's Harbour Master, and subject to the provisions of paragraphs (3) and (4) below, enter upon and from time to time dredge, scour, deepen and improve the bed, shores and channels of the sea adjoining or near to the authorised works for the purpose of affording uninterrupted means of access thereto or for the accommodation of vessels thereat.

(2) Without prejudice to the generality of paragraph (1) above, the City Council may exercise the powers of that paragraph so as to ensure a depth of 5 metres below Admiralty chart datum in the vicinity of, and in the approaches to, the authorised works.

(3) All maintenance dredging works shall be carried out in accordance with any sustainable dredging regime applicable to the Special Protection Area from time to time.

(4) Any power to dredge under this Order which is reasonably likely to have a significant effect on the Special Protection Area shall be subject to the consent of the Secretary of State.

(5) Subject to paragraph (6) below, all chalk, gravel, rock and other materials dredged up or removed by the City Council in the exercise of the powers of this article shall be the property of the City Council; and they may use the same or any part thereof, or they may sell or otherwise dispose of or remove or deposit the same, as they think fit.

(6) No such materials shall be laid down or deposited in contravention of the provisions of any enactment as respects the disposal of waste; or in any place below the level of high water—

- (a) otherwise than in such a position and under such conditions and restrictions as may be specified by the Secretary of State; and
- (b) without the consent in writing of the Queen's Harbour Master having been first obtained.

(7) The powers of the City Council under this article shall be exercisable subject to the provisions of articles 23 (Crown rights) and 24 (Saving rights of Queen's Harbour Master) of this Order; and, in particular and without prejudice to that general limitation, any consent given to the exercise of such powers by the Crown Estate Commissioners on behalf of Her Majesty may be given subject to such restrictions and conditions (including the payment by the City Council to the Crown Estate Commissioners of royalties, rents or sums of money in respect of materials raised from any place below the level of high water and sold by the City Council under this article or in respect of any place below the level of high water upon which materials may be deposited) as may be fixed by the Crown Estate Commissioners.

Fine for obstructing works

13. Any person who without lawful authority intentionally or recklessly obstructs any person acting under the authority of the City Council or others duly authorised to carry out the works in setting out the lines of the authorised works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Tidal works not be executed without approval of Secretary of State

14.—(1) A tidal work shall not be constructed, altered, enlarged, replaced, relaid or extended 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 or extended in contravention of this article—

(a) the Secretary of State may by notice in writing require the City Council at its 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 City 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 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 City Council as a debt in any court of competent jurisdiction.

Provision against danger to navigation

15.—(1) In case of injury to or destruction or decay of tidal work or any part thereof forming the Tall Ships Berths the City Council shall as soon as 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 shall from time to time direct.

(2) If the City Council shall fail to notify Trinity House or the Queen's Harbour Master as required by paragraph (1) above or to comply in any respect with a direction given under that paragraph, they shall be respectively 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

16.—(1) Where tidal work forming part of the Tall Ships Berths is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the City Council 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 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 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 City Council it 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 him in so doing shall be recoverable from the City Council as a debt in any court of competent jurisdiction.

Survey of tidal works

17. If the Secretary of State at any time deems it expedient to do so, he may 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 City Council in respect of expenditure incurred relating to the Tall Ships Berths as a debt in any court of competent jurisdiction.

Permanent lights on tidal works

18.—(1) After the completion of a tidal work the City Council shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take other such steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the City Council fails to comply in any respect with a direction given under paragraph (1) above, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Lights on tidal works during construction

19.—(1) The City Council 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 Trinity House shall from time to time direct.

(2) If the City Council fails to comply in any respect with a direction given under paragraph (1) above, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Recovery of fines

20. All fines and forfeitures recoverable under the provisions of the Act of 1847 as incorporated with this Order or under any bye law made in pursuance of section 83 of the Act of 1847 as so incorporated may be recovered summarily.

Power to lease

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

Extension of Section 86 of Portsmouth Corporation Act 1959

22. Section 86 (Powers with respect to disposal of wrecks) of the Portsmouth Corporation Act 1959(a) shall have effect as if the references in subsections (1) and (7) of that section to any approach to the Inner and Outer Camber as extended by the quay works included references to the Tall Ships Berths.

Crown rights

23.—(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 City

(a) 1959 c.xiv.

Council to take, use, enter upon or in any matter interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any other 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, and
- (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 as appropriate.

Saving rights of Queen's Harbour Master

24. Nothing in this Order shall take away, alter, prejudice or affect the jurisdiction or any rights, powers, authorities or privileges of the Queen's Harbour Master.

Inquiries by Secretary of State

25. The Secretary of State may cause such inquiries to be held as he may consider necessary for the purposes of the exercise of any of his powers or duties under this order, and subsections (2) to (5) inclusive of section 250 of the Local Government Act 1972 shall apply to any inquiry as if it were a local inquiry held in pursuance of subsection (1) of that section.

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

Stephen Reeves
Head of Ports Division in the Department of
the Environment, Transport and the Regions

31st July 2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Portsmouth City Council as the Harbour Authority for the Portsmouth Harbour to construct a series of free floating pontoons to form ship berths and walkways to cater for the needs of tall ships visiting Portsmouth Harbour. A structural platform will be constructed on the western face of the Gunwharf Quay wall leading to a pedestrian gangway. A disabled passenger and equipment hoist will be installed at the northern end of the new berths. The Order empowers the Council to lease the works once completed.

The deposited plan and sections may be inspected during working hours of the offices of the Director of Corporate Services, Guildhall Square, Portsmouth PO1 2PX and at the offices of the Department of the Environment, Transport and the Regions at 76 Marsham Street, London, SW1P 4DR.



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HARBOURS, DOCKS, PIERS AND FERRIES

The Portsmouth (Tall Ships Berths) Harbour Revision Order
2000

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