STATUTORY INSTRUMENTS

2017 No. 1329

TRANSPORT AND WORKS, ENGLAND

The Boston Barrier Order 2017

Made - - - - 12th December 2017

Coming into force - - 2nd January 2018

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**1**) for an Order under sections 3(1)(b) and 5 of the Transport and Works Act 1992(**2**) ("the 1992 Act").

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an Order under the Harbours Act 1964(**3**).

Notice of the Secretary of State's determination was published in the London Gazette on 4th December 2017.

The Secretary of State makes the following Order in exercise of the powers conferred by sections 3(1)(b) and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 13 and 15 to 17 of Schedule 1 to, the 1992 Act and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992(**4**).

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Boston Barrier Order 2017 and comes into force on 2nd January 2018.

(**1**) S.I. 2006/1466.
(**2**) 1992 c. 42. Section 5 was amended by S.I. 2012/1659.
(**3**) 1964 c. 40.
(**4**) S.I. 1992/3230 as amended by S.I. 1997/2906.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**5**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**6**);

"the 1980 Act" means the Highways Act 1980(**7**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**8**);

"the 1990 Act" means the Town and Country Planning Act 1990(**9**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**10**);

"address" includes any number or address used for the purposes of electronic transmission;

"the Agency" means the Environment Agency;

"the authorised works" means the scheduled works and any other works or operations authorised by this Order, or any part of them;

"the barrier" means the barrier comprised in Work No.1;

"the Black Sluice Complex" means the existing complex known locally by that name and located at London Road, Boston;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

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

"flood gates" means the flood gates comprised in Work Nos. 3A, 4A and 4B;

"footway" has the same meaning as in the 1980 Act;

"harbour authority" has the same meaning as in the Harbours Act 1964(**11**);

"the Harbour Authority" means Port of Boston Limited (registered company number 02198182) being the harbour authority for the Port of Boston, and includes its harbour master and statutory successors;

"highway" and "highway authority" have the same meanings as in the 1980 Act;

"internal drainage board" has the same meaning as in Part 1 of the Land Drainage Act 1991(**12**);

"the land plans" means the land plans included within the Order plans and certified by the Secretary of State as the land plans for the purposes of this Order;

"the level of high water" means the level of mean high water springs;

(**5**) 1961 c. 33.
(**6**) 1965 c. 56.
(**7**) 1980 c. 66.
(**8**) 1984 c. 27.
(**9**) 1990 c. 8.
(**10**) 1991 c. 22.
(**11**) 1964 c. 40.
(**12**) 1991 c. 59.

"the limits of deviation" means the limits of lateral deviation for the scheduled works referred to in article 5 (power to deviate);

"the limits of land for protective works" means the limits so shown and described on the land plans;

"the limits of land to be used only temporarily" means the limits so shown and described on the land plans;

"local authority" has the same meaning as in Part 1 of the Local Government Act 2000(**13**);

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and "maintenance" is to be construed accordingly;

"the Maud Foster Sluice" means the existing Grade II listed sluice known by that name and located at Windsor Bank, Boston;

"Order limits" means the limits of deviation, the limits of land for protective works and the limits of land to be used only temporarily;

"Order plans" means the plans certified by the Secretary of State as the Order plans for the purposes of this Order;

"owner", in relation to land, has the same meaning as in the Acquisition of Land Act 1981(**14**);

"Port of Boston" means the harbour undertaking of Port of Boston Limited vested in it by the Boston Harbour Revision Order 1989(**15**);

"the public rights of way plan" means the public rights of way plan included within the Order plans and certified by the Secretary of State as the public rights of way plan for the purposes of this Order;

"the river" means the river Witham, also known (downstream of the existing sluice known locally as Grand Sluice and located at Fydell Street, Boston) as the Haven or the Boston Haven;

"the river area " means so much of the river as lies within the Order limits;

"the scheduled works" means the works specified in Schedule 1 (scheduled works) or any part of them;

"the sections" means the sections included within the Order plans;

"sewerage undertaker" has the same meaning as in Part 1 of the Water Industry Act 1991(**16**);

"street" includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"tidal work" means so much of any work authorised by this Order as is in, on, under or over tidal waters or tidal lands below the level of high water;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"vessel" means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(**17**);

(**13**) 2000 c. 22.
(**14**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.
(**15**) S.I. 1989/2036.
(**16**) 1991 c. 56.
(**17**) 1968 c. 59.

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain;

"the Wet Dock" means the existing Wet Dock located within the Port of Boston; and

"the works plan" means the works plan included within the Order plans and certified by the Secretary of State as the works plan for the purpose of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) Any reference in this Order to a work identified by a number of the work is a reference to the work of that number referred to in Schedule 1 (scheduled works).

(4) References in this Order to numbered plots are references to plot numbers shown on the Order plans.

(5) References in this Order to reference points are construed as references to Ordnance Survey National Grid Reference points.

(6) References in this Order to points identified by letters, or letters and numbers, are to be construed as references to points on the Order plans.

(7) All distances, directions, lengths, points and areas stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are to be taken to be measured along the scheduled work.

Application of 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway must be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts)(**18**) of the 1980 Act or section 184 (vehicle crossings)(**19**) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned must, in relation to works which are major transport works by virtue of paragraph (1), be construed as references to the Agency.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56 (directions as to timing)(**20**);

section 56A (power to give directions as to placing of apparatus)(**21**);

section 58 (restrictions following substantial road works)(**22**);

(**18**) Section 64 was amended by Schedule 17 to the Local Government Act 1965 (c. 51) and Schedule 9 to the 1991 Act.
(**19**) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and Schedule 8 to the New Roads and Street Works Act 1991 (c. 22) and sections 35 and 46 of the Criminal Justice Act 1982 (c. 48).
(**20**) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
(**21**) Section 56A was inserted by section 44 of the Traffic Management Act 2004 (c. 18).
(**22**) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

section 58A (restriction on works following substantial street works)(**23**);

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing etc. of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works)(**24**).

(4) The provisions of the 1991 Act mentioned in paragraph (5) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Agency under the powers conferred by article 12 (temporary stopping up and diversion of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**25**) referred to in paragraph (4) are—

section 54 (advance notice of certain works)(**26**) subject to paragraph (6);

section 55 (notice of starting date of works)(**27**) subject to paragraph (6);

section 57 (notice of emergency works)(**28**);

section 59 (general duty of street authority to co-ordinate works)(**29**);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) 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.

(7) Part 3 (Permit Schemes) of the Traffic Management Act 2004(**30**) and any permit scheme made under that Part do not apply in relation to any works executed under this Order.

(**23**) Section 58A was inserted by section 52 of the Traffic Management Act 2004 (c. 18).
(**24**) Schedule 3A was inserted by Schedule 4 to the Traffic Management Act 2004 (c. 18).
(**25**) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**26**) As also amended by section 49(1) of the Traffic Management Act 2004 (c. 18).
(**27**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 (c. 18).
(**28**) As also amended by section 52(3) of the Traffic Management Act 2004 (c. 18).
(**29**) As amended by section 42 of the Traffic Management Act 2004 (c. 18).
(**30**) 2004 c. 18.