

Study: River Works Licences for Residential Use

MINUTES of Steering Group meeting 1, 29 July 2010

PRESENT:	From Madge Bailey Associates	Madge Bailey, Independent Consultant (MB)
	From DVS	Richard Whitehill, Independent Consultant (RW)
	From PLA	Richard Everitt, Chief Executive (RE)
		Brian Chapman, Head of Finance (BC)
		John Ball, Head of Property (JB)
	From OPLAC	Alistair Gale, Director of Corporate Affairs (AG)
		David Beaumont, Chair (DB)
		Susan Penhaligon (SP)
	From RBOA	Moirá Allan (MA)
		Rex Walden (RexW)

Appointment of Chairman

It was AGREED that RW would chair the Steering Group.

A provisional Agenda had previously been circulated by AG. Some amendments had been submitted by OPLAC which were ACCEPTED, and the meeting proceeded in accordance with the revised Agenda.

PURPOSE OF MEETING

The wording was AGREED.

1. INTRODUCTIONS AND ROLES

The Steering Group members introduced themselves with brief statements of their experience and current roles:

Madge Bailey, Independent Consultant (Madge Bailey Associates), formerly with British Waterways, who has been commissioned by the PLA to conduct a Study into residential River Works Licences.

Richard Whitehill, Chartered Surveyor, from the Valuation Office Agency, who has been commissioned by the PLA to act in an advisory capacity to the Study as an independent expert on property and valuation. Richard has expertise in valuing marinas.

Richard Everitt, Brian Chapman, John Ball and Alistair Gale, senior management from the Port of London Authority, the public body with statutory responsibility for the River Thames and licensing authority for River Works Licences.

David Beaumont (Chair), Susan Penhaligon and Moira Allan from the Organisation of PLA Customers, the campaigning organisation representing River Works Licence holders.

Rex Walden, Chairman of the Residential Boat Owners Association, representing boat owners on the River Thames as well as other UK waterways. He has worked with MB in the past in formulating British Waterways' residential moorings policy and paid tribute to her abilities and professionalism.

Planning permission/definition of "residential"

RexW asked about residential boats without planning permission. Normally residential boats require planning permission but this cannot be inevitable because Planning Inspectors have found in favour of boats on occasion. JB stated that it would generally be assumed that if a houseboat owner has a RWL, it will also have

planning permission, while RE acknowledged that there are exceptions, eg Waterman's Park, which has a RWL but not planning permission, and that it is difficult to define what constitutes residence (many boats are used as *pieds-à-terre*). JB suggested that it could be part of the study to define what a residential boat is. For the purposes of the study, the consultant will consider riverworks licences in relation to residential use as a dwelling.

Consultants' contracts

DB requested a copy of the contracts which the independent consultants have with the PLA. RW handed out copies of the DVS Standard Terms of Business, and his letter to JB confirming the terms of his instruction to act. MB does not have any equivalent from the PLA; there was an initial enquiry as to her willingness to undertake the Study and her fees for doing so. Her instruction was in the form of a purchase order in response to a breakdown of fees which she supplied. She agreed to supply a copy of correspondence with the fee detail redacted. RE confirmed that the PLA wants objectivity and neutrality from the independent consultants.

(ACTION MB)

2. TRANSPARENCY

This will be an important aspect of the conduct of the Study. RW stated his belief that the issues discussed and information disclosed are likely to have considerable confidentiality requirements and that all members of the Steering Group need to understand this and give an undertaking as to confidentiality. The work of the Steering Group will be discussions in progress. It will restrict openness if confidentiality is a constant concern. RexW said that there were points in the journey with MB in arriving at the BW moorings policy that could have caused concern had it become public prematurely and before full debate. He recognised that it was a difficult matter for OPLAC, in that they were representing other people.

Opinions differed in the meeting as to the nature of the confidentiality undertaking: RW felt that the Steering Group needs a formal undertaking that whatever happens in the group will be kept confidential, and that this will enable the group to open up difficult alleys, while DB felt that complete confidentiality should apply to what is said in meetings, and need not necessarily apply to the fact that certain issues were being discussed. He pointed out that confidentiality was already covered in point 5 of the Terms of Reference for the Steering Group, and felt that was enough assurance. MB believed that houseboat owners would be deterred from participating if detailed discussions became public, and that the Chair should decide what was confidential.

The question of whether the Minutes of the Steering Group meetings should be published was also discussed. JB anticipated that things which would be unpalatable to both sides would be discussed, and that it was inevitable that the Minutes would contain information that should not be made public. DB proposed that the Minutes should be made public, but not until after they had been agreed at the next meeting. JB suggested that either the Chair or MB should issue statements to keep all interested parties informed as the Study progressed. The communications would come from the Steering Group as agreed statements. MB agreed with this suggestion, and offered to prepare headline statements.

The meeting AGREED that a formal confidentiality undertaking will be given by all members of the Group, which will be discussed at the next meeting in the light of a letter which RW will draft for signature by Steering Group members. The Steering Group Minutes will be published after having been agreed by the next meeting subject to removal of any confidential elements.

(ACTION RW)

MB believed that transparency in her conduct of the study would be achieved through interviewing and consulting with a range of people. It was her intention to make a database recording responses and to report comments under categories of people/interested parties rather than named individuals. She believed that houseboat owners would not speak freely if their responses were to be directly attributed. She said that the chair could audit her database if required.

3. DISCUSSIONS OF ORIGINAL TERMS OF REFERENCE 12th JULY 2010

Provisional Terms of Reference had previously been circulated by AG, with some amendments submitted by OPLAC.

(a) Terms of Reference for the Study

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| Title | The view of OPLAC is that use of the term "Houseboat Fees" is contentious, in giving the impression that the basis of PLA charges is houseboats rather than river works. It was AGREED by the group that the wording would be changed to "PLA River Works Licences for Residential Use." This issue relates to Section 67 of the 1968 Act and is listed as Item 2 on the List of Issues already submitted to the Committee by OPLA, to be considered as part of the Study. |
| Items 1, 2, 3 and 4 | OPLAC's proposed changes related to the same issue as it the title, and were AGREED by the meeting. |
| Item 5 | <p>OPLAC had proposed two changes in Item 5. The first relates to a draft Harbour Revision Order (ie a means of making changes to the 1968 Act) which was recently put into the public sphere by the PLA. RE explained that the current status of the HRO is an informal consultation to gauge public opinion with the aim of avoiding a public enquiry. There is a formal consultation procedure with the public and interested parties which will be conducted by the Marine Management Organisation and, if the proposals prove to be contentious, there will be a public enquiry (independent of the PLA) following which the MMO will decide on the proposals. A proposed change of wording from "whilst not being inconsistent with the statutory principles as set out in the Act" to "taking account of the Act" was AGREED.</p> <p>It is Madge's understanding that she could consider options outside the strict terms of the 1968 act.</p> <p>The second proposed changed in Item 5 was AGREED.</p> |
| Item 6 | No changes proposed. |
| Item 7 | It was AGREED that the completion date can be extended if necessary. |
| Item 8 | <p>OPLAC suggested an addition to the terms of reference that the aim should not be to raise additional revenue. DB explained that the reason for making this alteration addition is that there is a view among some OPLAC members that the study is a cover for a revenue-raising exercise by the PLA. RE stated that the outcome of the study could not be prejudged. There may be an increase in the PLA's revenues, but the important thing is to establish a methodology. AG pointed out that this was set out in Item 6a. JB felt that it was important to be honest, and that inevitably there would be winners and losers , whatever methodology is proposed.</p> <p>RexW suggested that Item 8 could be rephrased to "This study is not designed to increase ..." MB thought that this would be interpreted as a guarantee and would prefer to see Item 8 taken out. DB felt it was preferable to say that the study would not increase total revenues.</p> <p>RexW stated that the Steering Group has to be pragmatic. It was inevitable that some moorings would be undervalued and there was going to be a catching-up exercise. It</p> |

was necessary to accept that and demand that the increases would be fair and would be phased in. MB pointed out that phasing-in was already in Item 6b and confirmed that there was no specific briefing from the PLA as to the outcome of the study. RW said there was no point to the study if it did not result in an even playing-field, while JB thought that it was about equitability to everyone.

RW pointed out that recognising that there was inequity between two locations (for example Isleworth vs Chelsea) was not the same thing as saying that one was paying too much. DB insisted that the Study should not be an exercise in everyone paying more.

The proposed Item 8 on revenue neutrality was NOT AGREED and would be taken out, with DB dissenting.

RE suggested that 6 a, b and c should be carried out, and then the Steering Group would consider how the outcomes should be put into effect. MB should have a free hand to present the outcomes and the Steering Group would then consider the effects on individual people.

**Items 9, 10
and 11**

AGREED, with the only addition that the fee details which MB provided to the PLA will be redacted. Items 9, 10 and 11 will be renumbered as Items 8, 9 and 10 in the final version of the Terms of Reference.

(b) Terms of Reference for the Steering Group

Purposes of the Steering Group

OPLAC's addition was AGREED, with the substitution of "recommendation" for "determination."

Subheading It was AGREED that subheading "Terms of Reference" would be changed to "Conduct of Members".

Items 1 – 4 No changes proposed.

Item 5 It was AGREED that the last sentence, "Some matters may need to be discussed in confidence among group members only" would be changed to, "Items that are identified as confidential within the Steering Group will be kept as confidential."

Items 6 – 8 It was AGREED that OPLAC's suggested additions were more appropriate to the "Purposes of the Steering Group" and would be moved to that heading as a further 3 bullet points.

4. PLA ISSUES

JB handed out a statement of the PLA's intention and objectives in commissioning the Study. He stated that the methodology should be put in place first; after that, the Steering Group could deal with differing mooring circumstances, for example: individuals vs enclaves, co-operatives such as Thistleworth vs businesses such as Chelsea. The methodology should encompass all circumstances and it was important not to prejudge.

SP raised the problem of selling a houseboat, and not being able to tell the purchaser how much a licence will cost. JB said that the Study should solve this problem by putting in place a transparent methodology and that the formula which MB will come up with will take care of discrepancies. If a houseboat owner sells to a third

party, although the licence is not transferrable, the PLA will negotiate with the third party. If valuing like-for-like, the methodology will give the same result. If valuing different things, the methodology will still apply. For example, if a houseboat is replaced by a smaller houseboat, the methodology will take that into account. The "footprint," rather than the condition or luxuriousness of the boat, will be a factor. MB commented that an argument could be made for charging the size of the berth, regardless of what the licence holder puts on it. It is important not to prejudge.

Security

RexW explained that, because there are not enough legal moorings on BW territory, there is no security of tenure. JB stated that a RWL from the PLA is very secure, in giving security of occupation. SP stated that there is currently no protection for houseboat owners on rented moorings.

Making changes to the 1968 Act

DB raised the possibility of MB wishing to propose something that would need a change in the Act. For example, the threat of arbitration, which has been very controversial in the past. RW pointed out that arbitration is designed to be something not to be undertaken lightly, a last resort to encourage people to seek solutions themselves; and in the case of the 1968 Act, arbitration is available to both parties. There is no such fallback with BW: if the parties cannot reach agreement, the licence is not issued. The PLA have proposed an intermediate step with a mediator, but if the proposed solution is unacceptable, the PLA cannot take away the licence holder's right to challenge it and therefore want arbitration to be left in the Act. RW stated that, until such time as the Act is changed, all parties are bound by it.

It was AGREED that if this matter should arise, it will be discussed by the Steering Group.

5. CUSTOMER ISSUES

An OPLAC handout on issues identified had already been circulated, with six more added during the course of the meeting. The first issue on the list was discussed briefly:

1. Boat rental value vs mooring rental value. JB explained that the PLA had looked at boat rental value as an indicator of market value in the past, but that this had proved to be problematical in practice as it took account of the nature and condition of the boat. In reply to DB's statement that we need standard licence terms, JB replied that new licences being issued have standard terms.

JB announced three more issues to be addressed in the Study:

25. Access agreements.
26. Premium payments to secure moorings ("key money").
27. Subletting of boats. There is an investment market within the market for moorings which is being freely traded. Whether this issue needs to be included was discussed and it was AGREED that multiple occupation of residential houseboats as commercial operations should be part of the study. It was important to distinguish residential houseboats from other commercial enterprises. MB stated that she wanted to understand the different scenarios, and intended to prepare profiles of individual sites.

OPLAC also added three issues:

28. Should enclaves pay more or less per boat than individuals?

29. Potential capacity of a mooring vs actual occupancy.

30. Definition of standard licence terms.

It was AGREED that a form communication would be sent out to all RWL holders giving information about the Study and inviting their participation.
(ACTION ALL PARTIES)

6. WORK PROGRAMME

MB explained that a 12-week public consultation process had been allowed for after the delivery of her Study. It is a 2-stage process: first the Study which MB has been commissioned to carry out, then the PLA, as a Public Body, must put the report out for public responses. After the public consultation, the Steering Group will reform (probably including MB) and make any necessary changes. MB will then have 28 days to produce the Final Report. It was therefore AGREED that OPLAC's suggested final three lines adding the public consultation was not necessary and should be removed.

MB explained that she was planning to do an Interim Report on whom she has met, the key issues, and the themes/issues/perspectives which she has identified. The report would be circulated to the Steering Group.

(ACTION MB)

OPLAC had suggested that an interim meeting to review research so far was needed during the information gathering period to discuss valuation options and other issues as required. It was also pointed out that the Study at present was scheduled to conclude just before Christmas. From the point of view of publicity and generating interest in the public consultation, it would be better if the Study could be extended into January 2011 to avoid the distraction of the Christmas period.

MB undertook to consult about dates for the extra meeting and to produce an updated Work Programme in the form of a timeline to include the new meeting and extended timescale.

(ACTION MB)

7. INTERESTED PARTIES

MB asked for suggestions of other parties to be consulted. Various names were put forward:

JB undertook to provide a list of names of all Chartered Surveyors who have represented RWL holders, and MB requested the names of Chartered Surveyors who have represented the PLA, for balance.

Michael Woolf and Ben Fanning are Chartered Surveyors who have represented parties in arbitration;

the PLA's current surveyors, Matthews & Son;

boat brokers: London Tideway, The Houseboat Centre (London and Thames), Apollo Duck;

estate agents: Riverhomes; Waterview;

boat surveyors;

Pat Walsh, civil engineering contractor with vast river experience;

non PLA houseboat customers and mooring operators;

British Waterways;

The Environment Agency;

boatyards;

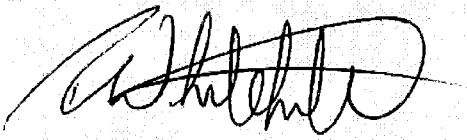
marine insurance companies.

Crown Estate

Members of the Steering Group undertook to send further suggestions as they occurred.

In view of the time overrun, it was AGREED that the meeting would end at this point and that Items 7, 8 and 9 of the Agenda would be postponed until the next meeting. MB will consult Steering Group members about availability and advise the date of the next meeting.

(ACTION MB)



Chair PLA Riverworks Licence Steering Group

17th September 2010

