

Study: River Works Licences for Residential Use

DRAFT MINUTES of Steering Group meeting 3, 29 November 2010

PRESENT:	From Madge Bailey Associates	Madge Bailey, Independent Consultant (MB)
	From DVS	Richard Whitehill, Independent Consultant (RW)
	From PLA	Brian Chapman, Chief Financial Officer (BC)
		John Ball, Head of Property (JB)
		Doug Kempster, Corporate Communications Manager (DK)
	From OPLAC	David Beaumont, Chair of OPLAC (DB)
		Peter Banks (PB)
		Moirá Allan (MA)
	From RBOA	Rex Walden (RexW)

MB had previously circulated an Agenda for the meeting.

AGENDA ITEM 1: Minutes of the last Steering Group meeting

Following the agreed procedure, the Minutes for the Steering Group meeting on 17 September 2010 had been circulated and scrutinised in advance via email, and signed off by the Chairman.

AGENDA ITEM 2: Matters arising

One alteration was made to the Minutes of the Steering Group meeting on 17 September 2010. The meeting AGREED that, under Issue 26 of the *Issues for consideration* (p8), the sentence "He also believed that one of the reasons why someone might want to invest in a boat was that it is simpler to let a boat than a flat" should be removed from the Minutes.

RW ruled that, notwithstanding the problem with *Matters arising* on this occasion, the agreed procedure of finalising the Minutes of the previous meeting in advance via email would be adhered to.

AGENDA ITEM 3: Work programme

MB distributed copies of the latest update of the work programme timeline. Three more meetings of the Steering Group are scheduled before the Final Report goes out to public consultation.

AGENDA ITEM 4: Current river works licences and licensees (Paper 4)

RW handed over the chair of the meeting to MB for discussion of this item. Paper 4 had been circulated in advance of the meeting.

MB stated that there was great variation in the circumstances of the 41 River Works licensees. She planned to hold workshops with the parties concerned in order to further inform the review. Discussion centred on *Types of mooring arrangements* (p4). MB explained that the numbers of licensees recorded in different categories e.g. 13 licensees recorded as owner occupiers, was provisional at the moment and might require a small adjustment up or down, once any further information was provided.

In response to a question from RexW on the proportion of commercial letting vs informal letting by boat owners, MB explained that it was currently only possible to be certain in the case of the two large, multi-tenancy vessels. The number of persons occupying the boat was not a reliable guide on this point. PB agreed with this point and stated that this was an old problem about commercial use. The important point was *residential* use of the boat, regardless of the number of occupants. BC stated that the licence was granted by the PLA on terms based on information supplied by the licensee about the use of the boat.

JB described the changes which had occurred, on land and on the river, in the lettings market over the last 20 years with the development of buy-to-let property investment. He felt that this trend on the river was to the detriment of traditional houseboat ownership and its way of life. The PLA would like to distinguish traditional from investment boats. DB questioned whether leaseholders on land would be required to pay more in order to sublet. RW pointed out that JB was not saying at this point that the PLA would refuse consent to sublet, merely that this was something that had to be looked at. JB agreed, and said that the PLA had a duty under the Act to consider the possibility. PB emphasised that on land, the terms of a lease, once agreed, were not affected by subletting. He did not agree that this question had any relevance to the River Works Licence as it concerned the use of the boat; he wished for it to be minuted that he did not agree with rent as an indicator of value. MB stated that this was one of the issues to be discussed at the next meeting (on 16 December 2010).

RexW queried the situation with Richmond Churches Housing Trust: were their moorings at nos. 9 and 10 Ducks Walk part of their charitable housing provision or simply an income stream? PB stated that, having had dealing with RCHT in the past, he was able to say that the moorings were regarded as an income stream. They were nothing to do with the Trust's provision of social housing. MB stated that the RCHT rents were relatively low, which reflected the fact that there was no consistency in the approach to charging for moorings, and people adopted their own approach. There was a need to debate the question of whether rent is an indication of value. More work had to be done on this issue.

During the discussion DB referred by way of example to a resident owned company being paid a small percentage from the sale price when a boat was sold on its moorings. MB commented that with fully commercial sites her experience is that such transactions are likely to be at 10%. PB stated that he was aware of two sites where there was no charge made when a boat changed hands on its moorings. He felt that there was no justification for a marina to take a cut in the sale of a boat which had already been sold. It was agreed that this was a common practice and happened in other parts of the country. RW stated that it could affect the value of a mooring.

Paper 4 and other papers which were circulated in advance of the meeting were marked as "Confidential." In view of the amount of information to be absorbed, DB wanted to bring other people into the confidentiality clause. OPLAC wanted to be able to bring in other expert opinion to help with interpretation and analysis of the data. Additionally in his opinion, there was nothing in Paper 4 (generalised data on number of licensees etc) which could not go immediately into the public domain and referred to a meeting prior to the Steering Groups being established at which Richard Everitt, the PLA chief Executive had said that data would be published.

The feeling of the meeting was generally against adding any more persons to the Steering Group at this point unless it was felt to be essential. RW believed that adding one or more voices to the debate would inevitably hamper the Steering Group's work and make scrutiny of the research material and issues less thorough. Time was already an issue, in view of the meeting overruns. However, if OPLAC wished to submit names of advisors to the Steering Group, the PLA were willing to discuss adding them to the confidentiality agreement.

In response to a question from DB, BC acknowledged that the information on River Works Licences and licencees might be put into the public domain eventually; he believed, however, that this should not be done while the process was ongoing. He felt that the confidentiality agreement had to be strictly adhered to. The meeting acknowledged that there was widespread cynicism among houseboat dwellers about the Study; however, the general feeling was that limited publishing of information before the Final Report would not allay suspicions. DK believed that it would merely generate demand for more information. RexW felt that people who are sceptical about the Study will go on being sceptical, and that the best course of action was to acknowledge the scepticism and encourage the doubters to participate in the public consultation following the Final Report.

DB asked JB and BC to identify any parts of Paper 4 that need to be kept confidential, none being identified he maintained his opinion that there was no need for confidentiality in relation to Paper 4 and wished to place on record whether the raw data would be published with the Final Report. JB stated that the report would need to be backed up with data and BC stated that all research data which were germane to the conclusions of the Study would be published with the Final Report. The Study was not yet at the stage where research material could be

made public. MB pointed out that there might be different reasons for confidentiality, reflecting the differing sources and contents of various documents.

RW believed that the Study would be judged by the final result. He ruled that, in the interests of covering the business of the Agenda, the discussion should move on from this point. DB wished his dissent to be minuted and expressed his intention of writing to RE to set out his concerns about Paper 4 being kept confidential.

AGENDA ITEM 5: Review of the policy and practice of other navigation/river/harbour authorities (Papers 1A & 1B)

MB presented her review to the meeting and emphasised that her researches were considerations to be taken into account. She was not proposing simply to transfer the practice from another authority. She had marked these papers as "Confidential" as they included information from individuals as well as information that was already in the public domain.

PB suggested that the relevant sections of the 1968 Port of London Act should be set out in their entirety. This was AGREED by the meeting.

PB suggested adding some overseas situations, and the Medway ports. MB acknowledged that the Flemish system was interesting. As the PLA operates under UK statute, she was concerned to look at other UK statutory situations.

DB expressed a concern about the tone of Paper 1A and felt that it might be seen as not neutral enough and as reflecting the PLA's point of view. He suggested that parts of the paper should be reworded with a change of terminology. MB believed that she had been neutral, and was unwilling to accept guidance from any particular section of the Steering Group on rewording her report. This would apply to the PLA as well as to OPLAC. RexW stated that Paper 1A was a factual report. It was always possible to word a statement in different ways. He suggested that the Steering Group should take note of the factual information and move on.

Points from *Key findings and conclusions for the PLA study*

5. Environment Agency – the consensus of the meeting was that the Environment Agency should not be ruled out as a comparable. RW believed, as a valuer, that the EA's statute reference to a "fair and reasonable" consideration was very similar to the PLA's "best consideration." MB undertook to include the EA and to look further into a legal ruling relating to a licensee's costs.
6. Crown Estate - In answer to a question from RexW, RW stated that the Crown Estate does employ surveyors, but uses Carter Jonas as their agent.
7. British Waterway/Crown Estate – DB felt it was important to bear in mind additional costs to RWL holders due to tidal rise and fall (the great majority of RWs are below Richmond Lock). MB agreed to look into all marina costs. RexW stated that BW charges marinas for the run-off of surface water from their infrastructure into the canal.
8. MB stated, in reply to a question from DB, that BW's local towpath fees are published and are based on pricing policy. They are market comparables, informed by auctions. BW must not undercut local commercial operators, and therefore in principle a towpath mooring charge should not be lower than a marina's. RexW asked whether it was the riparian owner's responsibility to put in infrastructure, and MB undertook to check this point. He stated that many leisure moorings are being used residentially, and MB stated that despite possible unauthorised residential use, BW still treats them as leisure moorings..

DB raised the issue of ownership of the riverbed in relation to the origin of canals. He sought to contrast canals, which were originally built by commercial companies for profit, with rivers, which were natural features of the landscape. He stated, in reply to a question from MB, that he would expect to pay more for mooring in a canal than on a river in order to reflect the costs of construction. MB felt that canal history, which goes back 200 years, is not relevant to today. BW did not carry any debts or profits

of canal companies. RW pointed out that DB was equating cost with value, which is not the case for valuation purposes. Today it would be impossible to calculate and factor in the historic costs of canal construction. RexW felt that this point was part of the mix of information. We know what custom and practice are in BW.

9. DB requested that the Crown Estate should not be excluded as a comparable on the grounds that there is no methodology for charging. MB explained that the Crown Estate considers market values and marina operators' margins in setting charges. RW stated that the Crown Estate has no standardised agreement / terms with boat owners, but only with marina operators. RW appreciated the difficulty that the lack of a methodology would cause. He felt that values could be considered as comparables. It was AGREED that the lack of a methodology would not preclude the Crown Estate charges from being considered as comparables.
11. DB felt that the wording of this paragraph did not make it clear that a lease is more valuable than a licence and therefore attracts a higher fee. RW stated that that point was highly debatable. JB stated that no statutory authority on navigable water can grant a lease without a revocation clause. The PLA had granted leases in the past with revocation clauses.
12. RexW questioned whether the PLA River Works licensing could go under the Waterways Ombudsman. BC felt that was prejudging the outcome of the Study. MB referred the meeting to her presentation later in the day on licenceholder feedback. BC stated that arbitration is a one-off charge for a specific case, while the Ombudsman would have to be paid for whether his/her services were used or not. DB expressed the view that even with this the total cost might be less with a permanent Ombudsman depending on the number of cases.
13. In reply to DB's request to see the BW Fair Trade Code of Conduct, MB referred him to the BW website. The Code of Conduct covers fair trading issues such as non-competition with the people whom it is licensing, i.e. marina operators, and pricing of moorings.
14. The wording of the first sentence will be changed to, "Very few of the sample have granted licences for works ..." in order to make the meaning clearer.

Under *Conclusions*, MB summarised the actions on Paper 1 as follows:

1. The EA, Crown and Medway Ports will now be included as comparables.
3. Costs on both sides are relevant.

Consideration of Paper 1 concluded with a brief discussion of the possibility of including non-UK comparables. DB felt that the Flemish system should be included. JB stated that the research in Europe would have to be comprehensive and that MB could not prejudge by selecting locations. MB stated that it was beyond the scope of her remit to research the European statutory framework. She proposed to concentrate on UK locations in terms of statutes, policy and practice, and to include the Flemish approach when considering any price differentials.

BC and JB expressed their satisfaction with the research which MB had conducted, and felt that the factual information which she had gathered would inform the process of arriving at a methodology for a fair and transparent formula for RW charging. RexW felt that the research was comprehensive and helpful.

AGENDA ITEM 6 River works licensing and charging history from PLA and licensee perspectives (Paper 3B) is postponed due to overrun of meeting

AGENDA ITEM 7 Review of licensee and resident consultations with MBA (Presentation)

MB gave a presentation to the Steering Group and reporting licence holders views to the meeting following her consultations.. She had had little response to the initial mailout, and had contacted people directly, finding face-to-face meetings much more productive in obtaining people's personal histories and opinions about the issues list.

The feedback from the licenceholders was that whilst some people accepted the PLA's basis for charging, others were very keen for clarity on the PLA's legal position and right to charge RWL fees. MB felt that, before the Study could proceed to considerations of the methodology of charging and dispute resolution, it was essential to obtain Counsel's opinion on the interpretation of the 1968 Act. She proposed to the meeting that this now be done.

The slide titled *Works licence/mooring value* makes a reference to a "current legal opinion." In reply to a request from DB to see this opinion, JB explained that it related to an arbitration case in the name of Penny Jones and was an interim opinion by the arbitrator. It was not a barrister's opinion.

DB raised two concerns: the first was a possible breach of paragraph 10 of the Terms of Reference for the Study, which stated that information given to the Consultant should also be given to the Steering Group. JB pointed out to the meeting that reference to this opinion was included in the *Document Log* which had previously been circulated to the Steering Group. JB also stated that the opinion could not be given to the Steering Group without Ms Jones' consent. DB was reluctant to accept this reason and asked if Ms Penny Jones permission had been sought before disclosure to Madge, JB said no; JB stated that what had been given to MB was an extract. MB confirmed that she had received an extract.

JB suggested that, if DB wished to see this arbitration opinion, a possible solution was for OPLAC to ask Ms Jones directly for a sight of the opinion, as DB had confirmed that she was a member of OPLAC. DB wished it to be recorded that he remained unsatisfied with the answers to his concern. PB asked whether the PLA had obtained any other legal opinions in the past. BC stated that he could not recall any in the nine years that he had been with the PLA.

MB felt that this arbitrator's opinion, as it concerned a leisure mooring, was irrelevant as the Study is concerned with RWLs for residential use only. She emphasised that she was proposing a new legal opinion should be obtained by the steering group. RexW welcomed the idea and stated his intention of requesting a small sum as a contribution to the cost from the RBOA. He felt that a barrister's opinion would have more credibility among houseboat dwellers if the cost was shared. DB stated that it might also be possible to obtain a small contribution from OPLAC.

The meeting AGREED to MB's suggestion. JB stated that a legal opinion was needed on what constitutes a River Work under section 66 of the Act, and on what constitutes the value of a River Work. He felt that, as there were only 41 RWLs, it would be possible for a barrister to go through them all. RW stated that the Steering Group would instruct a barrister to give a legal opinion. He and MB would consider possible candidates and come to the Steering Group with suggestions. Among OPLAC members was a barrister, Barry Singleton, unfortunately not in a branch of law which was relevant, but it was to be hoped that he would have some suggestions about finding a suitable barrister.

NEXT STEPS

The next meeting of the Steering Group is on 16 December 2010. The topics that were planned to be covered are below but MB felt that items 1 - 3 should now wait until after the legal opinion:

1. Different potential indicators of value, e.g. mooring fees, site licences, premiums, sale values, rental values etc. on the river and any other comparable sites/locations.
2. A long list of charging options, and development of a short list using the agreed criteria. Detailed options on the short list will be developed further in January/February 2011. MB planned to hold workshops to obtain input from all parties.
3. Other options may emerge as the Study progresses.
4. MB hopes to have time to cover Items 6 and 8 on the Agenda for today's meeting, which had to be postponed.

However, the first priority on 16 December 2010 will be the wording of the legal brief and possible choices of barrister. RW requested members of the Steering Group to bring or circulate in advance suggestions for the brief, and names of possible barristers.

Note of future Steering Group meeting dates:

Thursday 16th December 2010

Thursday 17th February 2011

Friday 1st April



Chair PLA Riverworks Licence Steering Group

17th September 2010