

The London River

Don't Pay the Ferryman

Under a *sky the colour of smoke* *, the Thames in Central London has historically been the place to hail a ferry. For as long as London has been a river crossing such ferries have been a feature of the waterfront, along with the watermen who operate them. In the mid-nineteenth century the embankments created by Bazalgette to allow London's effluence to flow less dangerously and less visibly to the sea, also increased the speed of the tidal flows, making river ferry crossings more hazardous. Since this time ferry operators have turned increasingly to the carriage of sightseeing passengers, a trade which continues to the present day. In 1555 the (Worshipful) Company of Watermen and Lightermen had been established by Act of Parliament *to control the Watermen on the River Thames responsible for the movement of goods and passengers*. Today licenses to operate ferries on the Thames are issued by The Port of London Authority, a self-financing public trust created by act of Parliament in 1908 and operational by 1909. The Port of London Authority is responsible for ensuring navigational safety along the Tidal Thames, pace M. V. 'Marchioness'.

A Public Enquiry, which convened in November 2007, met to consider a dispute between Westminster City Council and the owner of one of these Thames ferries, the M. V. Golden Jubilee. The ferry had been in disputed occupation of a mooring close to Waterloo Bridge since September 2002 and had continued to use the mooring at Temple Pier on the Victoria Embankment without planning consent, despite having been served with a series of planning contravention notices. The dispute prevented for more than five years the occupation of the berth by a vessel that did have planning permission, the Ross Leopard, built in 1957 and recognised as being of note historically.

At the enquiry, counsel acting for the Port of London Authority, London River Services and the operator of the Golden Jubilee, claimed that to have granted planning permission on this berth to a permanently moored vessel such as the Ross Leopard set a precedent detrimental to the use of similar Thames moorings by commercial ferries. Counsel asserted that the vessel Golden Jubilee used the berth only as a *function of navigation* and in plying her trade as a disco ferry, and therefore did not require planning consent.

Counsel acting for Westminster, with reference to records provided by planning officer Mr Paul Simmons, showed that the vessel Golden Jubilee was effectively in permanent occupation of the mooring and as such did require specific planning consent. According to Mr Simmons report, which was compiled over several months and was not contested, the vessel spent most daylight hours on the berth, leaving it vacant to service private booking requirements as they occurred, usually in the evening and on average four times each week for two or three hours at a time. Counsel for Westminster therefore indicated that the Golden Jubilee, a visually unprepossessing, functional river craft, was using the berth in a manner contrary to a Unitary Development Plan (UDP) which requires that planning permission for use of this high profile site should be granted to vessels which enhance the unique visual character of the surrounding area, such as the Ross Leopard. The operator of the Golden Jubilee, London River Services and the Port of London Authority had all previously been invited to apply for a Certificate of Lawful Use (CLUED) in respect of the mooring, but declined to take up the offer.

Following four days in court session, including a site visit, Chief Planning Inspector Mr Christopher Craig, presiding, in December 2007 found in favour of the owner of the Golden Jubilee concluding that, in his opinion, use of the appeal site was effectively as a *function of navigation*, despite the evidence produced that

contradicted this assertion.

The case reached the appeal court six years after the original planning committee hearing in November 2001. In that time the Port of London Authority are proven on two occasions to have submitted false and misleading information on a Planning Contravention Notice (PCN). It is a criminal offence under the Town & Country Planning Act 1992, to knowingly submit false or misleading information on such a document. Westminster Council were made aware of this, and chose not only to ignore the fact, but further, to agree with the appellant's counsel at the public enquiry to ignore this transgression for the course of the hearing. Precedent has now been set by Westminster that the provision of false & misleading evidence on a Planning Contravention Notice is perfectly acceptable to their planning process. Despite a recommendation in 2006 to consider pressing charges against the Port of London Authority, Westminster declined to pursue the matter, pointing out that it was beyond statutory time limits.

In 2005 the implementation of the Freedom of Information Acts made it possible to gain the release of documents detailing the events that had surrounded the Ross Leopard planning application, and the mooring dispute which ensued, including the method by which Planning Contravention Notice evidence had been fabricated by the Port of London Authority in conjunction with London River Services (a subsidiary of Transport for London). The Port of London Authority, when asked for documentation relating to Temple Pier under the Freedom of Information Acts, refused on the grounds that they were exempt from these Acts. Enquiries to the Information Commissioner confirmed this. The same documentation request was made under the Environmental Information Regulations, which came into force at the same time as the Freedom of Information Acts. The Port Authority also refused this request stating that they were exempt from the Environmental Information Regulations as well. An appeal was made to the Information Commissioner, who ruled that the Port of London Authority were subject to these regulations. The PLA then filed an appeal with the Information Tribunal, which was rejected. The Tribunal decision noted the Port of London Authority's *cavalier attitude with the truth* in regard to this matter. (PLA vs. The Information Commissioner & John Hibbert. Case no: EA/2006/0083)

Background

The location of Temple Pier on the Victoria Embankment was previously the mooring place of RRS (Royal Research Ship) Discovery, the research vessel that took Captain Scott and his crew to the Antarctic. The site was purchased by the Port of London Authority from the Ministry of Defence in 1980 after the Discovery had relocated to her home port of Dundee, and in 1999 ownership of the existing Temple Pier structure, including an upstream and a downstream pontoon, passed from the Port of London Authority, who retained the freehold of the riverbed, to the recently created London River Services. In March 2001 a vacant berth was available on the river ward side of the upstream pontoon.

Following discussions in early 2001 between the owners of the Ross Leopard and the new lease holders (from London River Services) of Temple Pier, it was agreed that a planning application be submitted for the vessel Ross Leopard, which is converted for use as an art space and bar, to permanently moor and trade on the riverward side of this upstream pontoon at the pier. Planning consultants Hephher Dixon were engaged and in due course case officers recommendation was achieved. Unusually, three days before the relevant planning committee hearing case officers recommendation was withdrawn. Ross Leopard's consultants Hephher Dixon conceded that this event was unique in their experience, but the owners felt that there was little option other than to continue with the application.

In November 2001 Mr John Hibbert, acting as an adviser to the owners of the Ross Leopard, was in

attendance with a representative of Hephher Dixon at the Westminster Planning Committee hearing, presided over by Mr Jonathan Gardiner. The Ross Leopard application was refused out of hand, and Mr Hibbert described the attitude of Mr Gardiner towards the application as flippant and derogatory to the point of rudeness. Finding the events immediately leading up to the refusal hard to reconcile, Mr. Hibbert looked a little more deeply into the matter and was surprised to find that the Chairman of Westminster Planning Committees, Mr Robert Davis, was an undeclared honorary member of the Worshipful Company of Watermen & Lightermen, an organisation whose members include the Chairman of the Port of London Authority along with the majority of Thames commercial ferry operators. The application appeared to have been 'hobbled'. A complaint was made to the Standards Board for England and, on the advice of the Westminster solicitor, Councillor Davis belatedly amended his membership registry. It was noted that no further action was taken by the Standards Board.

Councillor Robert Davis, a solicitor and property developer, was chosen by Shirley Porter for the implementation of her 'homes for votes' policy in the late nineteen-eighties. He is the civil partner of Sir Simon Milton, the leader of Westminster Council and GLA Deputy to Boris Johnson. Shirley Porter, the Tesco heiress, was stripped of the title of Dame in July 2003, an unprecedented move for such a senior local politician, as a result of the fallout from her corruption of the political process.

Mr. Hibbert was further disappointed, although now less surprised, to find that the owner of the Golden Jubilee was also a full time employee of the Port of London Authority. The owner, Mr Scott Neicho, resigned his position with the Port of London Authority in 2004, presumably as a result of this dispute.

An appeal was filed in May 2002 by the owners of the Ross Leopard against the planning refusal, and in September 2002 planning permission was duly granted. At a meeting convened with Mr Nick Ashby and Mr Brian Turner (lease holders at Temple Pier) shortly after the appeal decision, the owners of the Ross Leopard were informed that the mooring was no longer available due to its occupation by the Golden Jubilee. It was also made clear that the Port of London Authority had taken an interest in the matter and would oppose any occupation of the berth which precluded its use by vessels such as the Golden Jubilee. In July 2002 Mr Hibbert filed a formal complaint with Westminster Council pointing out that the Golden Jubilee continued to trade without planning permission at Temple Pier, despite the planning permission granted to the Ross Leopard, and in March 2003 Planning Contravention Notices (PCN's) were served on all parties with an interest in Temple Pier, including the operator of the Golden Jubilee, London River Services and the Port of London Authority.

After Westminster Council reissued the notices due to a technical defect, in August 2003 Planning Contravention Notice responses to Westminster from the Port of London Authority and London River Services claimed ten years continuous use of Temple Pier mooring by disco ferries from 1993 to 2003, which would give permission by the ten year 'rule'. However, a discrepancy was noted by advisors to the Ross Leopard: While the Port of London Authority statement contained details of the continuous mooring of disco ferries from 1993 to 2003, the London River Services submission detailed continuous moorings only from 1993 to December 1998, not long enough to substantiate the ten year 'rule'. Further enquiries were made and, as detailed in the public enquiry papers, the Port of London Authority were proved to have submitted incorrect evidence on the Planning Contravention Notice regarding the moorings at Temple Pier post 1998, despite themselves having the correct information to hand.

In May 2004 Westminster invited all interested parties to submit a supplementary Planning Contravention Notices, which would cover a new ten year period from December 1988 to December 1998. The goal posts had apparently moved. The Port of London Authority alone submitted supplementary Planning

Contravention Notice evidence which showed continuous moorings at Temple Pier for the period January 1988 to December 1998.

In June 2004, based solely on the supplementary evidence from the Port of London Authority, Westminster Planning Enforcement Team produced a report stating that, on the balance of probabilities, the Temple Pier mooring had been used continuously between December 1988 and December 1998 and that hence the ten year 'rule' could be safely applied. They noted that, in any case, the Port of London Authority was likely to defend 'vigorously' any action taken against the Golden Jubilee. The report recommended that no further action be taken by Westminster.

In September 2004 the owners of the Ross Leopard challenged the decision of Westminster by way of a Judicial Review. The Judge decided against the Ross Leopard appeal but did allow that Westminster continue to review their position should any new evidence be presented.

Freedom of Information Act January 2005.

Documents received as a result of Freedom of Information Act requests to London River Services and the Westminster Rates Department between June 2005 and February 2006, combined with dated aerial photographs from another source, proved conclusively that the reconfiguration of Temple Pier which allowed the use of the mooring by disco ferries was not completed until August/September 1989, and that therefore the ten year 'rule' could not be relied upon.

Further Freedom of Information Act documentation received in July 2005 proved that evidence submitted by the Port of London Authority in their supplementary Planning Contravention Notice submission, for the years January 1988 to June 1993, had been composed by Mr Andy Griffiths, General Manager of London River Services. The Port of London Authority subsequently submitted his statement to Westminster as being their own evidence sourced from one of their employees. Documents obtained from both Westminster and from London River Services prove that, at the request of the Port of London Authority, and on assurance that "anecdotal rather than documented evidence" would suffice, Mr Griffiths was able to present the Port of London Authority with a statement regarding the use of the Temple Pier mooring between December 1988 and June 1993 which was not correct.

In August 2005 a letter was received by Mr Hibbert from Captain David Cartlidge, Secretary to the Port of London Authority, confirming that "*works did not start on the reconstruction of Temple Pier until February 1989*" and that therefore the Port of London Authority had been incorrect for the previous two years in relying on the ten year 'rule'. The letter contained no apology for the Port of London Authority's actions in respect of their Planning Contravention Notice evidence.

Points of Interest

In 1996 an Enforcement Notice was served by Westminster Council on the Port of London Authority, as owners of Temple Pier, for the removal of a Marquee illegally erected on the site in 1994 with Port Authority permission. Despite the Enforcement Notice the marquee was not removed until 2004 and only then because the dispute over the Ross Leopard application had brought the matter to light. Exactly how effective is Westminster's Planning Enforcement Department?

Catamaran Cruisers Ltd, commercial Thames ferry operators, traded illegally at Temple Pier from 1990 to 1998 without any interference or attempt at planning enforcement by Westminster. They not only built the marquee without planning permission but when this came under the scrutiny of Westminster Planning,

no-one appears to have questioned what they were doing there in the first place. Catamaran Cruisers could only operate with the specific permission of the Port of London Authority who have their own planning department. It is not conceivable that the Port of London Authority were unaware that planning permission should have been requested for the use of Temple Pier. In any case, ignorance is not an admissible defence in law. The Port Authority appear to have decided unilaterally that planning permission on this mooring was not required and were able to make gainful use of this grey area of planning. In all matters relating to the river riparian authorities tend to defer, perhaps naturally, to the Port of London Authority. Commercial operators on the Thames are presumably not unaware of this fact.

By comparison to the six years of delay experienced by the owners of the Ross Leopard, an application made by the operator of the Golden Jubilee in 2004 to moor additional work boats at Temple Pier was granted within months, despite the fact that such mixed usage of the mooring unavoidably creates the hazard of additional storage of flammable and hazardous materials in an area used by the general public. The continuing mixed use nature of Temple Pier for permanently moored vessels, ferries and work boats would appear to fly in the face of health and safety considerations, but then it appears that commercial tie-ins to the PLA are rather helpful when executing planning applications on the river Thames.

The Port of London Authority is responsible for the safe navigation of the river; Thames-side land usage is not within their jurisdiction. Nonetheless, as freeholder of much of the riverbed they are enabled to intervene in instances where the commercial interests of themselves and/or of their associates may be affected. The Port Authority was able to fund the Westminster appeal as a result of their ownership of the freehold at Temple Pier, otherwise, by law, they would have been acting ultra vires, beyond their powers. Arguably, these freeholds should reside in a body not beholden to such conflicting interests, and one that is more democratically accountable, the GLA. Sections of the Thames riverbed not held in freehold by the Port of London Authority are owned, archaically, by Crown Estates.

Notes

Taken individually the points raised above might be cause for concern. Taken as a whole it is hard not to discern a systemic form of patronage on the London River, by which name London watermen traditionally refer to the Thames. The vessel Golden Jubilee continues to derive commercial advantage from documented proceedings and delaying tactics that call into question the impartiality and apparent lack of restraint of a body answerable only to Parliament, the Port of London Authority. It is certain that without the extraordinary tenacity and perseverance shown for nearly six years by Mr John Hibbert, the fraudulent evidence submitted by the Port of London Authority would have remained unquestioned. This must reflect almost as badly upon the checks and balances supposedly in place to prevent this kind of abuse of the planning process as it does upon the Port of London Authority and London River Services.

The owners of the vessel Ross Leopard have had their credulity and their patience stretched to the utmost limit by the events outlined above. What was a young, creative business has been undermined by the deliberate actions of entrenched, vested interests on this high profile section of the River Thames. Surely this state of affairs should not have been condoned, let alone abetted, by a public trust, the Port of London Authority, nor by their junior partner London River Services. Planning permission granted to the Ross Leopard on appeal in 2002 has now long expired and it would appear that the Port of London Authority and London River Services have been successful in their manipulation of the planning process.

The malfeasance and abuse of planning laws as detailed here are a direct result of the Port of London Authority's ownership of the freehold of the Thames riverbed. They point to the ongoing operation of a

river-based cartel in the heart of twenty-first century London, which is able to subvert the planning process at will. By doing so substantive financial gain is achieved in a way that is unfair and undemocratic. Effectively, commercial considerations which should be of relevance only to the Worshipful Company of Watermen and Lightermen have instead been allowed to remain embedded within the operating structure of the Port of London Authority. Such systemic abuse cannot bode well for the proper application of the statutory functions with which Parliament charges the Port of London Authority, including the safety of vessels operating commercially on the River Thames.

Unanswered Questions

1. Why was the planning case officers recommendation to allow the Ross Leopard application withdrawn from the Westminster report three days before the planning committee hearing? Planning consultants engaged on behalf of the Ross Leopard commented that this event was unique in their experience.
2. Is it common practice for Westminster councillors to withhold information from the Westminster Register of Members Interests? How many planning applications relating to developments on the River Thames were made to Westminster in the seven years that the chairman of the planning committee's interests were not fully acknowledged?
3. What are the extent and nature of the commercial interests existing between members of the Worshipful Company of Watermen & Lightermen and employees of the Port of London Authority? Note that the Worshipful Company of Watermen & Lightermen is much the senior of the two.
4. What caused the Temple Pier leaseholder to renege on his agreement to allow the permanent mooring of the vessel Ross Leopard, a position that becomes a volte-face when set against his assistance in preparing the initial planning application?
5. How is it that in a conversation with a representative of the Ross Leopard the day after refusal of planning permission, the leaseholder at Temple Pier remarked that a week beforehand he had been assured the application would not succeed? Who was able to assure him of this?
6. Why did the Temple Pier leaseholder write a letter on 5 March 2003 to Westminster Council Legal Department in which he stated:
'...the Ross Leopard won planning permission on appeal much against the wishes of both the City of Westminster and London River Services, - "It is not and shall remain never to be, our intention to grant permission for the 'Ross Leopard' to moor at Temple Pier. We have granted permission for the M.V. Golden Jubilee to use the Pier and this is granted entirely in agreement with London River Services" ?
7. Why were no prosecutions pursued by Westminster Council in respect of the false and misleading statements made by the Port of London Authority on two Planning Contravention Notices? It is notable that the council did not ask the Port of London Authority for documentary proof of the evidence contained in their second, supplementary Planning Contravention Notice submission, despite their having previously filed an incorrect report. This failure led directly to Westminster's decision not to pursue the case in June 2004, a decision rescinded after the submission of new Freedom of Information Act evidence sourced from Westminster's own rates department.
8. The Port of London Authority is self-funding by virtue of its commercial port and licensing businesses. At the same time it is entrusted with statutory tasks as defined by Parliament. Is there a conflict of interest

within this unregulated combination of purposes? Who ensures effective oversight of the Port of London Authority?

The answer to this last question is that no one does. This in part explains why Westminster City Council was unable to enforce a Unitary Development Plan (UDP) within their own constitutional boundary.

Documentation

Documents referred to above were submitted by Mr John Hibbert to the Public Enquiry and can be viewed in the case work relating to: APP/X5990/C/07/2038830 & 2038821, along with the submissions made by Westminster Council and the Port of London Authority.

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* Joseph Conrad, Heart of Darkness