

RIVER THAMES SOCIETY for the public inquiry on the PLA's Harbour Revision Order

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Speaking notes for Evidence in Chief 5th March 25

Introduction

- 1 For over 60 years the RTS has been an active member organisation covering the Thames from source to sea, with interests in protecting the natural beauty of the river and its adjacent lands and buildings of historic interest. Our aims include the promotion of nature conservation and the extension as well as preservation of amenities which allow and encourage use of the river. We all love what is special about the Thames. Most members do not own their own boats or live in riverside properties, but some do, including a few with houseboats. The Society is organised in 5 branches, 2 of which cover the tidal reaches.
- 2 The RTS is a regular attendee at various PLA stakeholder events and we have been actively involved throughout the HRO process. From the preliminary consultation stage we have tried to engage with our members in the 2 tidal branches and reflect their concerns in the responses made. As time has dragged on, it has been much more difficult to ensure what we have put forward is a collective view of the tidal membership at large, but we have continued to report back to members including using the RTS website.
- 3 We have tried to play by our understanding of the rules, so when responding to the formal consultation, we restricted ourselves to the proposals made by the PLA in the HRO, not those we hoped they would have made. We had a high threshold for counting a concern as a formal objection, so ended up with only 6 specific objections, with other points raised just as observations. Three of our formal objections have since fallen away, 2 in response to changes made by the PLA and the other after they pointed out the issue to which we objected was not new, just relocated within the Act.
- 4 That leaves the RTS with three remaining issues. These are firstly around the measures proposed for unserviceable vessels (s120A), secondly the need to disclose the identity of boat occupiers (s138) and thirdly restrictions of new public rights of way (175A). I am not going to repeat the arguments we have made to date including in our rebuttal evidence, so please take those as read. Following the cross examination of Mr Fanning and Mr Stride, we reaffirm our objections to those proposed measures. We think the restrictions of public rights of way need to be dropped, those on disclosing the identity of boat occupiers also to be dropped since they are not needed as adequate information can be obtained from the master or owner without risking the infringing of section 8 rights of boat residents, and the proposals for unserviceable vessels need to be severely limited to the original justification, namely to where there is a genuine impact on the safety of navigation.
- 5 I would like to make more general comments to reflect evidence revealed during the inquiry. At the preliminary consultation, the RTS indicated that inadequate justification was being put forward by the PLA for the changes they wanted. The statement in support used for the formal consultation was no better. But since the consultation closed, as we have seen the PLA trying to further justify its proposals in the face of objections, there has been a shift in the previous reasonings, with the PLA now being much more explicit about their finances sometimes being the justification. The PLA's interest in preventing sterilisation of land or

river bed which would limit the money they could otherwise get from a different user was not mentioned at all in their statement of support, but is now apparent both in relation to public rights of way and unserviceable vessels, and maybe elsewhere too.

- 6 During the enquiry the antagonism between the PLA and some of the objectors has become explicit, but the PLA does not help itself, and I am speaking now for an organisation that has never been in a legal dispute with the PLA and attempts to be on friendly terms. The PLA's inability to say it got something wrong is well demonstrated when comparing the striking differences between the consultation and the December 24 versions of the chart of the tidal Brent. But the line from the PLA was "The existing drafting was causing confusion which is why it is proposed to spell this out", ie it was our problem for being confused, not that the PLA made a mistake.
- 7 At the informal consultation stage we said: "Another overarching theme is that the PLA is proposing additional and greater powers in many areas of river life. We are not convinced that the right balance has been struck between the PLA holding such powers and the rights of others, such as individuals, boat owners, operators on the river and the concerned general public. Where new powers are being proposed, too much appears to rely on the PLA's own judgment, rather than any explicit and preferably validated generally agreed standards. This risks the PLA being seen as judge and jury. Fairness also dictates there has to be scope for challenge and appeal, most especially when an individual's home or business could be affected".
- 8 In responding to the formal consultation the RTS said "The PLA is unlike any other UK port in its geographical scope, variety, complexity, importance to economic and cultural life, engagement with so many local and other statutory authorities, and the number of residents afloat. Many of the PLA's acquired responsibilities are not core to the cargo-carrying and other vessel-related aspects of the PLA's business. This means the standard guidance for Ports, eg Port Marine Safety Code, may be an incomplete guide as to how such a port should function. Some of the new powers the PLA would like to acquire seem inappropriate for a body with limited public accountability, and indeed may be inappropriate for adding to primary legislation without the direct scrutiny of parliament...". So for some time we have flagged up our unease at the extent of what was being proposed and the manner of doing so, accepting that it may well be following a legally-approved process.
- 9 Our unease has not lessened since the consultation closed, and may even have been enhanced. In recent months we have heard from the Post Office inquiry about bad practice in unaccountable public bodies, but unlike the PLA, I do not think the Post Office were able to write their own legislation. Some of the evidence from other objectors has postulated the widespread abuse of its existing powers by the PLA, eg in charging for balconies. All this argues for great caution in enabling the PLA to have even greater power affecting the rights of the public who have no say in how they are run. In addition to our general disquiet, the RTS has specific issues of concern on the rights of those with unserviceable vessels, the privacy rights of boat occupants, and those wishing to enjoy future rights of way on PLA-owned bank or foreshore of the tidal river or over PLA-licensed structures.
- 10 You may be aware the RTS has been trying to find out the formal terms of reference of the inquiry, in part to help understand how much the actions which could appear to be the

formal responsibility of the MMO would fall into the remit of the inquiry. We are still unclear what can be raised at this stage but would like to share reflection on the consultation process, as informed by the papers revealed by the inquiry, hoping it does indeed fall within the inquiry remit. Essentially, we are marshalling points made by the RTS and others, rather than introducing new points for which the PLA might have been expected to have had more notice. In doing so, our intention is to assist the inquiry in how it reports to the MMO, including how any similar consultations should be run in future. We have not consulted others on this and do not claim it as being comprehensive.

11. Twelve points on the Adequacy of the consultation process

1. The consultation on the draft HRO and statement in support was undertaken by the MMO with the stakeholders of its choosing, taking more than the minimum time specified in the Harbours Act. Superficially, it then appears the legal requirements were metⁱ. But was this good enough?
2. Some objectors believe that an HRO of this sort should have been supported by environmental impact assessments (EIAs), and in the absence of these the HRO process is invalidⁱⁱ. The RTS in its response to the preliminary consultation had suggested a regulatory impact assessment would be helpful, but there has been none.
3. The RTS understood that comments could only be made in consultation responses on what was being put forward in the HRO, not what perhaps should have been included. That line has been subject to formal objectionsⁱⁱⁱ.
4. This was an extensive albeit non-works HRO and it is arguable that the consultation should have included a map/chart of the territory in question^{iv}. An interactive map was provided by the PLA only late in the process following a direct request from the Inquiry chair. It should have been available for the consultation.
5. On timing, the consultation took place in the summer, in the summer holidays/parliamentary recess/ party conference season, so even a couple of weeks added to the minimum may not have been sufficient to for responding organisations to engage and consult internally. There had been a delay since the PLA warned a consultation was going to take place and there were significant changes between the last version of draft documents shared by the PLA in April 2020 and the consultation version in August 2021 (eg no longer changing the definition of Mean High Water) so any existing briefing had to be updated. We needed more time.
6. In response to the preliminary consultation the RTS had said “The MMO will need to consult a wide range of stakeholders, including all holders of RWLs”. They did not. Many objectors have mentioned the inadequate list of those consulted^v. The subsequent rebuttal of this feels like all stakeholders were consulted and if you were not consulted you cannot have been a stakeholder. At a minimum, fair play and natural justice argues that anyone who risked specific adverse effects, or their representatives, should have been on the consultation list, yet notably absent were the NBTA who could speak for those with the informal moorings that were being threatened and National Trails responsible for the Thames Path affected by limits on Public Rights of Way.

7. The consultation documents were too complicated and lengthy (very high fog index) and without a simple and accurate summary. The press notice was minimalist and little guide to the new powers being requested. For those coming to the documents cold, it would take several days to understand what was intended, including what was different and what was just relocated within the Act. This consultation was not accessible to a general audience and appeared directed at already-engaged specialist stakeholders, disregarding that the local community at large was also supposed to be stakeholders. Fellow objectors advocating much wider dissemination of the consultation should reflect on the difficulty in comprehending it even for those with a high reading age and who were aware that this was going to be important to them, as the RTS discovered in trying to explain matters to its members. There had been a simplified guide at the preliminary stage, but none for the formal process.
8. There was internal inconsistency in the consultation documents, with the issue on the port limits covered at some length in the correspondence between the RTS and PLA on the tidal Brent found in bundle H.
9. The statement of support was incomplete, and did not include the same reasons as the PLA has been putting forward at the inquiry stage. New reasons have been introduced, and old ones apparently made less significant, questioning the validity of the consultation. In particular, several proposals were justified in the consultation on the very reasonable-sounding basis of ensuring the safety of navigation, but then information given at the inquiry stage show their rationale lay elsewhere, including enhancing income for the PLA. Indeed, Mr Lockwood in his proof of evidence seemed to suggest that anything which could bring more money into the PLA could justify a new measure in the HRO, eg in relation to disclosing the identity of occupiers so they could pay terminal dues which was he said “ultimately, this is to the benefit of wider river users as it will help the PLA recover what it is properly owed” [12.4.4 responding to the objections from the NBTA]. This reasoning does not appear in the PLA statement of support.
10. There may have been other false reassurances. On the proposed charges at Richmond lock and slipway (s27), RTS had responded to the preliminary consultation asking for the exemption for charges to be kept. The explanatory note at that time had given no details of the reasoning. The statement of case at the final consultation said: “Section 27 (exemption from charges at Richmond lock and slipway) – these are obsolete exemptions relating to trading barges and it is the case that no freight currently, or has for many years, transited through the Lock. This is an historic provision which is being removed as it is no longer relevant.” So believing there was no freight traffic any more, the RTS did not raise this as a formal objection. But Mr Lockwood in his proof of evidence para 8.9 gave figures for recent freight through the lock. We might well agree with him that this exemption was administratively burdensome, but we were misled in believing the need was obsolete and did not raise a formal objection we might otherwise have done.
11. There was a problem with the registration of some submissions which were ‘lost’ by either the MMO or the PLA or both. For more details, see bundles of Objector N and The Barge Association (DBA). We do not know of how many other objections were lost but never reappeared.

12. The PLA tried to operate a strict policy about disregarding comments which they claimed fell outside the deadline, which was particularly unfortunate for the DBA with a submission which had been submitted in time. Some objections appeared to have been shut down prematurely, until resurrected by the Inquiry (eg Chelsea Reach Residents Association CBRA Obj16). The long-drawn out process meant some objectors missed the chance to contribute in the normal way, eg having to be introduced as 'interested party' at the inquiry stage^{vi}. As has been pointed out by others^{vii}, the standard letter emailed by the MMO in 31Jan2024 attempting to clarify which objectors were still live was very badly received by those of us, like the RTS, who had been copying the MMO into all relevant correspondence with the PLA. In that letter, the MMO had indicated they would regard all objections as withdrawn unless they heard otherwise within 6 weeks.

I am aware some objectors believe the consultation has been so faulty it needs to be rerun. The RTS does not support a rerun of the whole consultation, and it would be a shame to lose the many non-controversial improvements, included the long-overdue action on grab chains and escape ladders. But given our points above, perhaps the Chair could find some alternative way of resolving some of the concerns raised about the consultation. I note that yesterday the option of objectors offering their own HRO was mentioned, but without the caveat about the costs then would fall to them. Sorry, there has to be a better way.

I offer these observations hoping it will assist the Inquiry chair in reaching a conclusion and in the drafting of his report, including what might be said to improve the handling of any future consultation on a non-works HROs for the Port of London or indeed any other Harbour.

Mrs Hilary Pereira

For the River Thames Society (RTS)

ⁱ Harbours Act

ⁱⁱ Thamesbank, BlueGreen Economy

ⁱⁱⁱ Eg Tower Bridge boat company opening statement

^{iv} OPLAC

^v Thamesbank, RBOA in 1.2, RTS re not engaging National Trails, NBTA, + others

^{vi} Mr Anthony

^{vii} OPLAC