



Madge Bailey Associates

Paper 3C

Review of licensee and resident consultations

Steering Group Meeting 29 November 2010
Study – PLA River Works Licences for Residential Use

Overview / Themes

- Legal opinion, monopoly, arbitration
- Prices pushing people and businesses to limits
- Willingness to pay something and debate
- Good suggestions, common sense
- Simple, clear, reliable method wanted



3 camps

1. Commercial moorings operators
Willing to pay, each suggested similar method
2. Challenge charge for 'value' of river works
Charge should be based only on works
Legal opinion wanted
3. Accept some charge for 'value'
Willing to discuss value and PLA's share



Who's views?

- Calls and discussions since summer 2010
- Issues list discussion and OPLAC meeting
- 2006 PLA consultation responses
- Recent meetings and calls:
 - 20 calls (10 hrs) 15 meetings (25 hrs) 9 emails
 - 63 people 43 from licensees 20 'tenant' boaters
 - 12 out of 25 licensees with 1-2 boats
 - 12 out of the 14 licensees with larger sites
- This report is 'one –sided' i.e. From the licensees and residents. PLA may have other views.
- Not the end of consultation



Feedback based on the Issues List

- Feedback on the issues list
- SG to debate some issues and views
- Note others – recommendation will depend on chosen charge methodology
- Only one extra issue (VAT)– shows the Issues List the SG developed was comprehensive



Works licence / mooring value

Should the charge reflect the use to which the river works are put. If so why?

- Want definitive legal opinion on PLA ability to charge for value of the works/mooring
- Other legal questions / interpretation of the Act:
 - value of boats (rental or sale)
 - potential value i.e. what PLA think licensee should be charging
 - reference to monopoly and reasonableness
 - want definition of river works
- Few familiar with 1968 Act
- Question PLA's change in charging – ref SG paper 3A history

MB:

- Fundamental principle on which this review rests
- Status and merit of current legal opinion
- Will give this review credibility
- Will give PLA firm footing and no further challenges (?)
- Output = clear statement and guide



Access agreements / riparian rights / ransom strip

Implications for fees where licence holder owns access land/river bank (cf Stokes V Cambridge). Disclosure of all access agreements and the fee paid up front or annually...

Land agreements vary – they can include:

Gardens, parking, simple point of access, freehold or short tenure,
expensive or cheap lease

Licensee Comments:

Influences the value of the mooring but is of no concern to PLA

Very variable costs for land access between licensees

Cost variations affect viability of each mooring and ability to pay

“Some licensees have to deal with two landlords - PLA and riparian owner - there is only a finite amount of value but neither landlord considers the other's charges and the total effect on the licensee.”

MB:

Complex issue – further analysis required

Debate riparian share whilst debate PLA share



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Premium payments / key money / boat/mooring rental

Should, or to what extent should premium payments be taken into account for the RWL? including disclosure of all premium payments...

- Payments include land access, mooring, and usually the boat – different size and quality
- Cannot easily isolate the element relating just to river works in the package
- Big variations – not robust enough for comparisons
 - e.g. £120k Chiswick 1 yr mooring vs. £800k Wandsworth 50 yr sub-licence
- *"There are not enough transactions in the market to provide sufficient evidence"*
- *"Why should the PLA benefit in any way from expenditure incurred wholly by the houseboat owner? "*
- *"If an investor sells his residential houseboat, he is liable to Capital Gains Tax. Why should the PLA take some of this tax via a fee to the detriment of Central Government?"*
- Difficult to monitor the transaction
- MB:
- Strong opposition to boat value share, also in 2006
- Complex issue – further analysis required



Locational Factors + Grounding

Should location factors be included in the fee calculation if so how?

Mixed views:

- The location affects the value of the mooring but the river is homogenous through location and time
- *“Why should the charge go up for someone who has lived on the river for years and land values have changed around them.”*
- Standard charge for use of riverbed everywhere
- Yes, discounts for grounding / wash from fire boats
- *“Any differential in fees along the river (say Chelsea versus Richmond), or regarding grounding out or aeroplanes is a recipe for disputes and I think should be avoided.”*
- Agree with differentials – pay more for nicer location
- Differentials could be based on river-related conditions

MB: Further consideration needed



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Gross or Net

Consider whether costs should be off set. If so which costs.

- Depends on nature of licensee / use of works
- Some big costs - variable between licensees
e.g. £40k wall repairs, £8k access p.a.
- High costs for boat upkeep if renting
- So many costs could be offset so it should be gross
- Should be "*Net receivable value*"

MB:

- Need to consider costs for each type of licensee / use
- Some separate a service charge, others include in mooring fee
- Costs affect viability of RWL and ability to pay
- Could develop standard list of admissible costs for businesses



Navigation licence fee

Relevance of navigation licence fees from BW and EA comparables and should the PLA receive the equivalent inside the RW fee?

- Not relevant and not comparable - BW spends the navigation licence fee on maintaining its infrastructure
- MB: Consider further if relevant

Double licensing issue (HRO)

Clarification that houseboat dwellers will never have to pay a river works licence fee and a mooring fee.

- Concern among those who knew about it and need for clarity
- MB: Written clarification needed from PLA

Licence fee when PLA doesn't own riverbed

- Few comments; just want clarity
- MB: Written clarification needed from PLA



Leisure Moorings

How valid are leisure mooring fees as comparables for residential ones...

- Same charge since same area of space occupied, regardless of use
- Should pay more since they navigate more often
- One operator charges the same for leisure and residential

MB:

- Different product, use, user and demand
- Cannot link values in any way - let the market decide (same charge as resi on some sites)
- Will consider whether the charging method could equally apply to leisure moorings



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Multi-occupancy boats

How should multi occupancy boats let by residential landlords be considered?

- Their profiteering must not pull up charges for others
- Perhaps a commercial RWL to reflect the commercial nature of the mooring

MB:

- How do you define?
- If easily / openly identifiable and they have accounts then could charge separately - same principle as others running a business from moorings.



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Charges based on length or area / boat shape / multi story / boats vs. floating homes

- Area occupied by boats: strong support - simple and fair
- Boat shape: a little support or no comment. MB: method supplied to MB, adds complexity but arguably fairer.
- Multi-stories: no support; not relevant to PLA; difficult to define; some space unusable
- Floating homes vs. actual boats: no real support
- Discount for historic boats

MB:

- Answer partly depends on whether PLA can consider the boat when considering 'value'
- PLA to decide if it has a remit to influence type of vessel and if it should influence via charges.



Actual works or potential

- Not much comment but preference for actual use - i.e. boats in occupation (allows for temporary voids and market activity) rather than capacity
- Vacant sites e.g. Richmond should have a minimum charge to penalise restricting supply.

MB:

Generally people / operators tend to fill all space available, need to allow for market movements, therefore use actual.

Enclaves vs. Individuals – treat differently?

- No reason to treat differently, unless cost saving for PLA admin.

MB:

- Many individual licensees moored together the same as an enclave.
- Issue is not clusters of boats but the type of licensee and operation of the moorings e.g. business, individual.



Effect of history on current fees / Arbitration

- Many personal accounts of rent reviews
- Unclear rationale and supporting evidence
- Costs of arbitration; lack skills; unbalanced
- Costs disproportionate to amount being sought
- *"Each licensee that has caved in and accepted substantial increases has been used as a subsequent comparable for other reviews. This is an iniquitous and circular process."*
- *"Disputes can take years and cause ongoing stress - these are people's homes."*



Reviews / monopoly position

- PLA price increases are destabilising the small market - *"How can people determine the value of a boat / mooring if a major cost is uncertain?"*
- Best consideration is agreed at outset- decisions made to invest on that value. Unfair to have major increases subsequently – holding to ransom.
- People are being pushed to or beyond their limit
- *"PLA is in sole control of RWL's and their charges. People either have to pay up or leave / close business down."*
- Conflict in the Act re best consideration and to take account of monopoly position
- Who is PLA accountable to /regulated by. Who can we appeal to about the PLA's principles and activities (not just RICS re rent disputes)?
- What is comparable land - whole riverbed is comparable and the PLA get no revenue from it.



Arbitration suggestions

- If method is clear and fair, some issues should fall away
- Suggestions include equivalent to rent tribunals, mediation, ombudsman or equivalent.
- *"Must be speedy, accessible and cheap, that all sides can trust."*
- PLA must agree to be bound by independent decisions.
- Central fund from PLA top-slice of RWL fees, but not too freely available e.g. licensee pays 3 months of their current charge.
- MB: Support for 'charter' for both sides with timetable, info required, likely fees and two stage process –
 1. checks PLA have followed proper process against published method
 2. further mediation relating to the amount
- Dispute resolution and cost ultimately depends on method



Licence terms

- Changes mid term: few comments; use common sense; depends on charging method
- Transfer: should be on same terms. MB: if charges clear and reliable, easier to value.
- Security:
 - Views differ on fixed term or open-ended. MB: offer both
 - Everyone accepts the need to revoke for navigational reasons and take a view on the likelihood.
 - Can PLA insist the same term is passed on to sub-licensees?
- No additional terms raised



Implementation of new charging method

- Adjustments to payments: few comments; use common sense; depends on quantum
- Future licences vs. existing: mixed views:
 - no justification if the charging method is logical
 - people coming into the market at new sites have a newly negotiated rate - know what they are getting into and have a choice.
- Have a cut-off point for people who have been here longest. PLA takes share and reassesses rent when they sell / die.
- Outstanding reviews: PLA to clarify **ref Paper 4**



Options for charging - 3 camps

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**Basic points now, further discussion at
16 December SG and detailed work in January**



Options for charging : Commercial moorings operators

- % of revenue from five of the more commercial operators – fair across sites, costs and prices
- *"If you're running moorings as a business, you get what people are prepared to pay."*
- *"British Marine Federation rule of thumb: managing agent has 25% as the 'fee' for operating the site"*
- *"The PLA charge cannot be a large part of the outgoings - the business cannot bear it."*
- Boater: *"Commercial operators should run to their own principles and make own pricing decisions. A % of revenue allows them to do this without pressurising prices up. Deduct operating costs because these vary across sites. Agree with 2006 consultation - 1/3 for riparian owner and 16.66% of mooring revenue (not boat value) for PLA. How to apply to individual boats / non-commercial operators: use comparables because this reflects the notional value."*



Options for charging: charge should be based only on works

- PLA don't own access, incur costs, risk or provide services. PLA don't maintain river bed where boats sit. Therefore minimal share / ground rent.
- Clear menu of charges for river works
- *“We own access – nobody else can put a marina here”*
- *“PLA is ground lease owner. The value elements are land, infrastructure and boats. The RWL is a minor fourth element that PLA is over-representing. As such there is no precedent for the PLA to consider themselves as ‘holding a key that unlocks value’. We already possess that key ourselves which is agreed to be irrevocable except in breach of licence terms.”*
- *“Value the licences using updated figures from before 1995; set an amount per sq m of boat ; apply this figure equally to all licence holders; index fees in a conventional way to aid future planning.”*



Options for charging: accept some charge for 'value'

- Use commercial sites and PLA share as comparables / notional fee to those who don't charge a mooring fee
- Charge for (a) the works plus (b) mooring fee for mooring against the works
- Like council tax - charges for services provided
- *"Reasonable standard charge for residential use of the riverbed, not based on size or shape of boats but on piles and length of pontoons. This charge could be linked to a house price or similar index."*



Options for charging – other points

- *“Some licensees have to deal with two landlords - PLA and riparian owner - there is only a finite amount of value but neither landlord considers the other's charges and the total effect on the licensee. The three parties should responsibly agree the finite amount and split accordingly.”*
- *“There needs to be a balance between the riparian owner's rights and the PLA. Balance is a matter for debate”*
- “Commons” approach – change PLA role so they moderate market-driven policies re residential moorings, through separating them for instance from commercial undertakings, and they manage the Thames as stewards for society.



Other comments and questions

- PLA has Corporate Social Responsibility - should encourage life and vitality on the Thames - we support other parts of river economy.
- These are people's homes - once they can no longer afford the RWL , there's nowhere they can go to - have invested in a boat as their home.
- How much does PLA spend on the river where we live?
- Why is PLA so concerned with the very small percentage of their income that comes from houseboats?
- What are the results of each occasion where the PLA went to arbitration over fees?
- What are PLA's costs of administering residential RWLs and costs of agents and arbitration?
- Do PLA staff have a financial incentive to increase our fees?
- Can residential boaters or licensees more generally be represented on the PLA board?



Conclusions / summary of views

- Legal interpretation and clear statement should help us move forward
- Concerns over affordability for some, and financial decisions for others
- PLA has dominant position and should provide some moderation
- Complex issues re land access, site arrangements and costs
- Mixed views on PLA share
- Range of suggestions for charging method and dispute resolution; some common views on specific details
- KEEP IT SIMPLE!



