

Item 5 – Appendix B

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Our Reference: P&E/Environ/EN12/JT12

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Dear Mr Myers

LONDON ASSEMBLY SCRUTINY - ACCESS TO THE RIVER THAMES

Thank you for your letter dated 2 January 2003 regarding the above London Assembly investigation, and more particularly for seeking the views of the Port of London Authority on the specific questions raised by the enquiry on both the Thames Path and access to the foreshore of the River Thames. I am aware that a number of identical letters have been sent to various officers within the PLA. This response should be taken as the Authority's consolidated written representations to the Scrutiny.

Prior to addressing the specific questions raised, I believe it is appropriate to provide you, and the Scrutiny Panel, with a brief outline of the legal position in relation to the foreshore of the tidal River Thames and the relevant issues regarding access to it. I would add that the legal position in relation to access points, and specifically their maintenance, is somewhat esoteric.

The PLA, which is a Public Trust, owns the vast majority of the bed and foreshore of the River Thames up to the Mean High Water mark between the upper port limit near Teddington Lock to a line drawn between the City or Crow Stone (Westcliffe/Leigh) to the London Stone (east of Yantlet Creek). Downstream of the Crow Stone/London Stone line (the 'Yantlet Line') ownership of the bed and soil is vested in the Crown. The Crown also retains certain areas of the bed and soil landward of the Yantlet Line (usually adjacent to Royal Palaces and parks) and a very small number of areas remain in other ownership. I attach, for illustrative purposes only, plans indicating the ownership of the bed and soil of the tideway within Greater London.

The general public have rights of access to the foreshore for the purposes of navigation and fishing on a tidal river and rights ancillary to the rights to fish, such as taking bait from the foreshore for fishing. There is no, in legal terms, public right to pass along or across the foreshore except in the exercise of rights of navigation and fishing, unless there is a lawful,

dedicated right of way from one place to another over the foreshore. There is no right of recreation, bathing or to wander along the foreshore, and no right to go across the foreshore for the purpose of getting to and from boats, except in places where rights have arisen through usage or necessity.

However, a claim might be made for a customary right. Every such right must have been in existence since 1189. In most cases this would be impossible to prove. In these circumstances, evidence showing continuous use, as of right, as far back as living memory can go, reasonable and certain as to its nature, confined to a particular locality and persons it is alleged to affect, must be identifiable. It does not bind the Crown. Therefore, a customary right is for a particular class of people and is not a general public right.

Amongst the powers exercised by the PLA is that of facilitating access to and from the River Thames for the purposes of navigation. However the PLA recognises that, notwithstanding the strict legal and ownership position in relation to access, there has always been a wish on the part of Londoners to use the foreshore for a variety of reasons other than for navigation and fishing. I should therefore state, prior to responding on the specific questions raised in your letter and notwithstanding the fact that no general right of access to the foreshore, which is privately owned, exists, the PLA is willing to tolerate the continuation of public access at locations where it is appropriate and the risks to safety are broadly acceptable.

The PLA is pleased to provide the following comments on the specific questions raised in your letter: -

Thames Path

3. Of the operational terminals which together constitute the Port of London within the boundaries of Greater London (which in 2002 handled over 25% of non-fuel cargo within the Port of London), 18 are located upstream of the Thames Barrier and 19 downstream. Of the terminals upstream of the Thames Barrier, the Thames Path continues across the frontage of four of them. Access is, however, usually subject to some degree of restriction to accord with the dangers of operational activity (such as at Walbrook Wharf in the City of London) or actually oversailing the operations being undertaken on the waterfront (Western Riverside Waste Transfer Station in LB Wandsworth).

Whilst the PLA believe that the Thames Path need not, in all circumstances, be incompatible with port operations, the continuation of the Thames Path must, for public safety reasons, at times be routed away from the river front or subject to some form of enclosure and access restricted when cargo handling is actually taking place. This need not prejudice the benefits of the Thames Path. The presence of the path through operational terminals can actually provide an inspiring vista of the 'working river', breaking the visual monotony of seemingly endless, homogenous frontages of new residential and office developments.

The terminal operators that currently do not have the Thames Path across their sites have, I understand, no legal obligation to provide it, and it is not for the PLA to prescribe that it should be provided. However, on those currently non-operational wharves that the PLA is endeavouring, in partnership with the London Governance and riparian local authorities, to reactivate, the potential operators are being

encouraged to consider accommodating the Thames Path, even in areas where it currently does not exist.

Downstream of the Thames Barrier, where much of the focus of port activity has shifted, the terminals are more substantial and the cargo handling facilities associated with them potentially pose greater hazards for those using any extension to the Thames Path. Terminals downstream of the Thames Barrier include the Tate & Lyle sugar refinery in Newham, Ford's in Dagenham and bulk cargo terminals handling steel, aggregates and metal recycling in Bexley and Barking. The security and safety issues explicit at operational terminals is paramount and any planned extension of the Thames Path (by whatever means) would require careful consideration of whether it was appropriate to encroach upon working terminals. It would be inappropriate for the PLA to prescribe to terminal operators that the path should be extended through operational sites.

6. The PLA has nothing further to add in relation to access to the Thames Path. However, the PLA probably has more information on access points to the foreshore than any other organisation. The PLA undertook a comprehensive survey of all riparian access points during the mid 1990's. The survey detailed over 250 such access points to the Thames, including stairs, drawdocks, slipways and causeways, the majority of which are located within Greater London. More recent research indicates that the number of access points is actually closer to 300. Steps and stairs started their life as an important part of the pedestrian network in London linking different districts of the capital by water transport. Their importance diminished as other methods of moving through the capital developed, particularly bridges, although it is recognised that they may provide a valuable point of egress from the Thames. It must be remembered that their primary purpose and design has never been as an access to the foreshore.

Some steps and stairs are privately owned and subject to a licence granted by the PLA and others may be owned directly by the Authority, although there is no reliable documentary evidence about the ownership of a considerable number of the facilities, some of which have been in existence since time immemorial. The PLA maintains that ownership of facilities which abut public highway (in the absence of evidence to the contrary) lies with the relevant highway authority, although this position is contested by some riparian authorities.

Historically, riparian landowners, who were often local authorities, constructed landing places to provide an interface for ferry services across and along the river. There is also evidence that parishes constructed access steps to provide inhabitants with opportunities to obtain water from the river. Watermen have formerly used others as plying places for many hundreds of years. Some are designated as 'marked landing places' under Section 84 of the Port of London Act 1968 (as amended), conferring responsibilities on the Authority to provide an alternative landing place if it removes, closes or permanently interferes with such an access.

The PLA endeavours to ensure that access to the river, for the launching of boats, is available. This activity occurs at causeways, drawdocks, hards and slipways, which are found throughout Greater London. The complex ownership issues associated with steps and stairs tend not to be as great with these landing places. The PLA has, where its ownership is confirmed and the landing place serves a defined local need,

undertaken improvement and refurbishment projects, although a lack of dedicated resources and other priorities means that the number of landing places that can be improved is necessarily limited.

In the PLA's experience, there are three issues preventing the greater use of these facilities for the launching and landing of vessels. The most pressing problem is the unauthorised parking of vehicles on landing places. Recently, illegal parking has occurred at landing places in the London Boroughs of Hounslow, Richmond and Wandsworth. The issue can be prevented, where resources permit, by the installation of demountable posts or through agreement with the Highway Authority, even where ownership is unclear, to incorporate parking restrictions both above and below the Mean High Water mark. The second, and less widespread problem, is the blocking or impeding of landing facilities by newly built development. The PLA, where it is in a position to contest this, either through its intervention in the planning system, or through control exercised by its ownership of the bed and foreshore of the Thames, endeavours to ensure that these facilities are not unduly impeded. The final, and least widespread issue is the blocking of landward entrances to landing facilities by existing flood defences. The PLA has held discussions with the Environment Agency on this matter which has resulted in agreement to reopen a previously blocked facility in LB Wandsworth as part of negotiations with the local planning authority on the proposed redevelopment of a site, but it is recognised that the protection of London from flooding must be a priority.

Thames Foreshore

8. It must be appreciated that the foreshore of the River Thames is a dynamic environment, subject to a tidal range, in central London, of over seven metres and flowing, during a strong flood or ebb tide, at up to three knots. As such, it can never be classified as truly 'safe'. Additionally, contributory factors mean, with the PLA's ownership of the foreshore and the associated issues of public liability, that access to the foreshore can never be made, in terms of insurance, 'safe'.

The unresolved issue of ownership of many of the access points has resulted in a number of them being in a poor condition with limited or no life saving provision. Resolving the issue of ownership of every access point would be beyond the resources available to the PLA. Furthermore, there are a wide variety of access points, with no minimum defined standard of safety features such as handrails, gating or associated signage. Together with the often poor condition of steps (and the widely differing foreshore and tidal conditions experienced) the sheer variety presents a range of hazards to an often unprepared public. The tidal river environment also ensures that access points will be submerged twice a day, leaving silt, vegetation and other debris. As long as the Thames remains a tidal river, there will always be a slip hazard at these access points, regardless of any cleaning regime. Finally, and perhaps most importantly, there is a general lack of appreciation amongst the general public as to the inherent risks associated with the foreshore and access points.

Organised groups that provide access to the foreshore for educational and other purposes, such as Thames21 and the Thames Explorer Trust are to be commended for the work they perform in terms of education. These organisations, together with Thames Mudlarks and Thames Foreshore Permit holders, have access to the PLA and others specialised in risk assessment and preparedness issues. Other members of the

public without the benefit of advice are often inadequately prepared and ill equipped for such excursions.

Every year the PLA receives a number of claims for damages for injuries claimed by people accessing the foreshore and experience has shown that in these cases a high degree of ignorance to the potential hazards associated with access. Children and the elderly are most at risk. Some riparian boroughs operate Junior Citizen or 'Crucial Crew' schemes, their objective to educate by exposing the local school children to community hazards in a controlled environment. Some of the schemes running in London incorporate a river/water safety scenario, utilising PLA educational facilities such as the 'Riverside Code' trailer and associated National Curriculum approved educational materials. In the PLA's view, it would not be viable, in financial terms, to provide a truly safe level of access to the Thames foreshore. Improvements can, and are being made in education and this is where the PLA believes resources should be made available.

In 2002 the PLA's 'Riverside Code' trailer was utilised at three Junior Citizen events enabling over four thousand school children to experience the potential hazards of the River Thames in a controlled, learning environment. The trailer was also used at a further four other Thameside events in 2002. I attach the summary pamphlet produced by the PLA in 2000 to publicise its 'Riverside Code'. The Code, which is sponsored by BP and Shell UK, is produced as a large format book and can be provided to the Scrutiny as part of the Evidentiary Panel sessions.

9. There may well be purely anecdotal evidence to suggest that there is public demand to increase access to the foreshore, although I am not aware whether this also includes, as the question enquires, whether it should be improved. The two questions are very different. The PLA has recently commenced keeping records on those enquiring and formally seeking permits to search and dig (using hand tools or a metal detector only) on the foreshore of the River Thames between Teddington and the Thames Barrier. It is an offence, under River Byelaw 57, to search the foreshore without a permit. There are three types of permit granted by the PLA and Crown Estate.

One Day and Standard permits allow the holder to dig to a depth of 0.075 metres, although certain areas of central London are excluded. Mudlark permits giving a dispensation to dig to a depth of 1.8 metres are only available to current members of the Society of Thames Mudlarks. Standard and Mudlark permits are valid for one year. Over the last few years, the number of permits issued has remained relatively static at between 130 - 140 per year. It is estimated that in any year, 15% are new permits with the remainder being renewals. On average, 10% of permits issued are to the Mudlark Society (annuals), 5% daily permits and the remaining 85% unaffiliated annual permits.

Although of course this evidence cannot be regarded as conclusive, it does demonstrate that in relation to those wanting to explore the foreshore in some detail, there is a steady demand, with the majority continuing to return to the foreshore year after year. There is no evidence to suggest that anyone applying for PLA permits has actually requested that access to the foreshore should be improved.

10. As owner of the foreshore, and therefore ultimately responsible for it, the PLA must view the issue of balance between safety and tolerating access on the basis of the

'precautionary principle'. Notwithstanding the legal and ownership position which confirms that there is no right to 'openness' in relation to foreshore access, the PLA understands that, where appropriate, access to the foreshore should not be unduly prejudiced.

I would therefore confirm that the PLA is willing to tolerate the continuation of public access at locations where it is appropriate and the risks to public safety are broadly acceptable. However, the PLA has a responsibility, as a Public Trust and landowner, to minimise as far as it reasonably can the risks to the public.

The PLA, together with the Crown Estate, as owners of the foreshore, is currently considering the issue of foreshore access in partnership with a range of statutory organisations (including the Greater London Authority) and amenity groups as part of the 'Thames Access Project'. This on-going work is referred to in the Implementation and Action Plan attached to the Blue Ribbon Annex within the *London Plan*.

I trust these representations provide the Scrutiny Panel with an understanding of the legal issues associated with the foreshore and access to it, and provides details of the PLA's position in relation to the specific questions asked. I confirm that David Cartlidge, the PLA's Secretary, will be attending the Evidentiary Hearing on 11 March at City Hall. Dependent on the progress made at the Public Inquiry into P&O's proposals for the London Gateway port development in Thurrock, I also intend to be available.

If you require any further information or clarification of the points raised in these representations, please contact me.

Yours sincerely

JAMES TRIMMER
HEAD OF PLANNING AND PARTNERSHIPS

Encl.

cc S Cuthbert, Esq. - Chief Executive
Rear Admiral Bruce Richardson, CB - Chief Harbour Master
D Cartlidge, Esq. - The Secretary