Proof of evidence from the River Thames Society (RTS) for the public inquiry into the Harbour Revision Order (HRO) proposed by the Port of London Authority (PLA)

21 Jan 2025

1. In its statement of case dated 17th December 2024 the RTS indicated that it had 3 remaining substantive objections to the PLA's proposals and another area where we have a specific comment on the adequacy of the consultation documentation. These are covered in detail in the evidence that follows.

2. It is noted that the PLA include several other points as potentially outstanding objections from the RTS (Objector 19) in their statement of case, eg summary table in the PLA appendix 3. These had been raised by the RTS in earlier correspondence with the MMO/PLA but the RTS is not intending to press them further: they should be regarded as having been formally withdrawn in the light of helpful explanation from the PLA and/or changes in their proposals. They do however indicate where our sympathies lie where the same points are still being pressed by others, and so may add weight to others' objections. Examples of this are firstly the newly-proposed **definition of houseboat in 2(1)** which the RTS thought was not fit for purpose, and where some anomalies remain even after amendments made to the definition, anomalies pointed out by the RTS during the preliminary consultation. Secondly, we indicated we preferred not to have an increase in the time for **adverse possession** as in **175B**.

3. **Unserviceable vessels Article 55 (s120A)**

3.1 The PLA intends that the new s120(A) will assist in the interests of safe navigation in giving it powers to deal with vessels they deem unserviceable. Para 4.27 of the Port Marine Safety Code reads: "Harbour Masters may also have powers, under the Harbour, Docks and Piers Clauses Act 1847 (as incorporated into local harbour legislation) in particular under sections 52, 56 and 57, to remove any unserviceable vessel located within the harbour and should do so wherever these present a risk to safety". The RTS believes this attempt by the PLA to gain such powers has over-stretched this guidance, counting even the remotest creek as of the same significance as the harbour proper and using arguments with an over-wide interpretation of safety. The RTS has no objections to powers essential to the maintenance of safe navigation, but it is uncertain that the proposals in the new s120(A) would make any contribution here, and come with significant downsides.

3.2 Navigation The justification given is not for any actual impact on navigation, but the potential for an as-yet-unrealised impact. There are already powers to deal with wrecks (s120) and floating debris (s200(1)), and all vessels are expected to be securely moored (PLA Thames byelaws 2012 p17.1). This proposal is to deal with an anticipated and potential problem that may never be realised, but if it were, then it can be argued the PLA already has adequate powers to deal with that situation.

3.3 The new powers being requested to deal with an unrealised potential navigational hazard are to apply not just to the main navigation channel/fairway, not even just to them and supplementary navigation channels, but it appears to be applied to all areas of the tidal river, including secluded creeks, private berths, boatyards and their immediate environs, whether or not at approved moorings. Any vessel on PLA waters inevitably interferes with the public right of navigation (PRN) of others, since no two vessels can be in the same place at the same time. So of course a vessel moored up on the bank, including in creeks, prevents others from enjoying their PRN in the same water space: this is no different for serviceable and unserviceable vessels. The basic case is not made that the perceived state of a static and moored vessel is relevant to the navigation of others. The safety of navigation is the only rationale given for this clause in the PLA's statement of support.

3.4 Adjoining land. New powers in the PLA's proposals extend to vessels on land immediately adjoining the river in some circumstances, even though this could be outside the port limits. This seems to be limited to 'if the state of the vessel may affect the navigation or conservation of the Thames….' It is assumed the PLA is not postulating that a land-based vessel could adversely affect navigation. So it seems the hypothetical situation that this specific clause is to fix must be a potential impact on 'conservation', explaining why the seemingly open-ended clause of paragraph 4 of Schedule 2 of the 1964 Harbours Act is included within the legal justification. The proposal seems for the PLA to be able to seize and destroy (at the owner's expense and after due notice) an object on the river bank (which in most cases would be lying outside the port limit and hence any direct responsibility of the PLA), in anticipation of a pollution-related or similar event affecting the undefined 'conservation', but only if that unserviceable object is a vessel, not say a vehicle or storage tank. This is extraordinary, and with no appeal available either. This must surely fail the test to be applied by the inquiry about compatibility with existing legislation.

3.5 The assessment of unserviceable. There is concern among boatowners that the assessment of unserviceable seems to be the harbour-master's alone. Unserviceable for what? The precedents quoted are unfit for sea service, but here we have unserviceable for river service. 'Reasonable' standards expected for a vessel navigating Sea Reach in bad weather are very different from those for a vessel in a mud-berth in a creek or sheltered inside an upriver ait. Appeal is only available through the Courts: this provides little comfort for those of modest means, which is likely to apply to the owners of the less serviceable vessels.

3.6 Whereas the harbourmaster may indeed be expected to have considerable expertise in relation to navigation and its hazards, it is far from clear that the harbourmaster is necessarily expert, and more so than the owner, on whether any private vessel is serviceable for the waters in which it is being used. Even for matters related to navigation, boatowners may not always have confidence that views attributed to the PLA and/or its harbourmaster will always be 'reasonable'.

3.7 Unlike in the legal precedents quoted, it appears the powers being proposed would not be limited to those vessels laid by or neglected by the owner. So they risk catching any vessel that superficially looks to be currently in a poor state, even if it is awaiting dry docking or other restoration. Any truly abandoned vessels can be dealt with under the existing s120(1). There are many examples of fine historic vessels that have come back from near-dereliction in long-term 'restoration projects', and thereby contributing to the amenity of the Thames.

We risk losing them in future. The PLA appears to have already dismissed the possibility of protection of vessels awaiting repair and restoration, responding to Objector 21 "The exercise of the power should not be reliant on the interpretation of an owner's intentions for the vessel in the future." We disagree.

3.8 Disposal of vessels. There is an accepted problem with the safe disposal of end-of-life vessels. The solution in the Harbours, Docks and Piers Clauses Act 1847, quoted as precedent for this clause, was to move the unserviceable vessel and beach it outside the active parts of the Harbour on the strand or sea shore. Breaking up the vessel, introduced as an option in the Harwich Act 1974, is being promulgated here. This issue warrants debate and discussion with interested parties, not the imposition of draconian powers which can antagonise conscientious owners and risk the loss of vessels of historic importance as well as those of personal significance to the owner.

3.9 Houseboats. After representations, vessels used as houseboats occupied for residential purposes have been exempted from this provision. This is welcome, and helps expose the shaky grounds for these proposals somehow being necessary for vessels that are not so classified.

3.10 In its response to the RYA on 6 April 2022 the PLA's rationale for this proposal also included 'There could be a variety of other reasons for which the PLA could need to remove a vessel, such as environmental reasons or those relating to future use of land' (emphasis added). This suggests the PLA has not been fully honest in this consultation, and is not being generally open with all its reasons. 'The interests of Safe Navigation' sounds like something that should be unobjectionable, and is being promoted by the PLA as the rationale for this change. But when looked at in detail, the proposals do not stack up for relevance to safe navigation. It feels as if the real reasons may lie elsewhere but have not been fully disclosed.

3.11 In an exchange following the PLA consultation meeting in November 2019 the PLA wrote about this new clause. "In future all vessels moored for long periods will be required to have permissions to be moored, whether it is as part of a works permission or under a separate mooring permission and these permissions will require the vessels to be riverworthy, so this power is only likely to be used where vessels are not subject to permissions or in an emergency." So the PLA's own judgement is that almost all circumstances can be dealt with through other powers.

3.12 The inevitable conclusion is that the case has not been made that these changes are needed for the purpose of making safe the navigation of the harbour, nor justifiable under paragraphs 3 or 4 of schedule 2 of the Harbours Act 1964. So the RTS objects.

4. **Identity of Boat occupants Article 66 now 68 new clause 138**

4.1 This is either a simple problem with drafting or something more sinister, but in either case the RTS objects. The PLA wants to have information on the identity of boat occupants, with penalties for refusal, admitting this would set boat-dwellers apart from those living in any other type of accommodation. The PLA's rationale for this requirement is to enable them to ensure and enforce the safety of the river.

4.2 The PLA claim “there are valid and proportionate safety reasons for being able to establish the identity of a person responsible for a vessel on a navigable waterway” but do not explain what these safety reasons are and how they apply to occupants of static houseboats. The RTS has no objections to the PLA needing to have basic identity information in the event of a navigational incident, but the PLA now is no longer proposing to have this specific reason for an information request (see PLA supplemental guide April 20 on the now-dropped new 138A).

4.3 It is unclear what the PLA would do with the information and with whom they might share it, though presumably there would be compliance with the GDPR. It is not stated if it is expected to cover some/all crew aboard ships at long-stay anchorages. It is unclear whether the PLA’s need is for the names of all the occupants at a particular time, including minors, or just a lead occupant.

4.4 The master of a vessel is now (newly) defined to also cover the occupier aged over 18 for the time being, if the owner of a houseboat is not present. The owner rather surprisingly seems to have been (newly) defined to include the occupier of a houseboat, which may cause some confusion for the increasing number of those letting their houseboats long-term. However, with these definitions of master and owner, it seems overkill to also have occupier in the new s138. The rationale cannot be to address an urgent albeit non-navigational need, since the request for the identity of the boat resident can be made in writing demanding information on the occupant at a specific and a particular time which may be long-passed. So what is the problem to which this is supposed to be the answer, and which is not already covered by information on the master or owner? The PLA has not explained, but argues the public interest is more than enough to outweigh human rights under article 8, in spite of the concerns expressed by boat residents.

4.5 The PLA comment about unspecified “valid safety reasons for doing so based on the potential dangers posed to and by those living on vessels” and boaters having “responsibilities that do not apply to residents on land” and also needing this information to “ensure and enforce safety”. It appears from 138(4) the PLA envisage needing to use this information for proceedings, with it not being specified what these might be.

4.6 The dangers posed by those living on vessels is obscure, but is something which a disclosure of the occupant’s identity is supposed to help resolve. Vessels with residents are almost always safely moored away from the main navigation channels, many being non-mobile vessels which are aground throughout much of the tidal cycle. If there are concerns about the potential for dangerous actors on a navigation which goes through the capital city, then this element in s138 would make little contribution. There is no requirement for identity disclosure on those exercising their public right of navigation on private vessels, nor as passengers or crew on commercial vessels, nor for those with Thames-side properties. Malicious actors would hardly be expected to correctly identify themselves anyway.

4.7 If the danger is one posed to the boat occupant, then again it is unclear how prior identity disclosure would help. Boat residents can choose to sign up for flood alerts, like those living on land close to the river. If there were a severe hazard on the water, like a toxic spill, then even the most up-to-date and comprehensive data-set would not likely make any difference.

Any alert to evacuate the river would have to apply to all nearby, whether they are boat residents, temporary visitors on cruising vessels or those living on pontoon-based structures that currently evade the vessel-based houseboat definition.

4.8 The RTS request that any mention of 'occupier' is removed from s138: the PLA should be able to access enough for its legitimate needs from information on the master or owner. This small element within s138 risks offending boat-residents and the added value to either their or the river's safety has not been demonstrated, in fact not even been adequately articulated by the PLA. Inclusion of 'occupier' in this section of the HRO is deemed not to meet the requirements of paragraphs 3 or 4 of schedule 2 of the Harbours Act 1964.

5. HRO and Public Rights of Way. Article 76 (now 78) ie proposed new 175A

5.1 We note there have been challenges to the legality of the HRO process including a challenge to the legality of this specific proposed change, but will leave that for others.

5.2 However, we do question the adequacy of the consultation and the judgment on who are the PLA's stakeholders. National Trails, responsible for the Thames Path, seems not to have been on the consultation list. Those with a prime interest on the banks rather than the river may well have been unaware of what the PLA were planning. The simple version of the consultation does not mention any action proposed on new rights of way, and the full version was complex and extensive. As pointed out by Objector 21 – the Company of Watermen and Lightermen of the River Thames – "The HRO 202[ ] contains 62 pages and is supported by a further 793 pages of documentation. Consequently, comprehending and producing a cogent and judicious response was a sizeable and complex piece of work". It would take considerable perseverance for those like the Ramblers Association (who we believe were on the consultation list) to reach so far into the proposals.

5.3 Throughout, the focus from the PLA has been the river itself not what might happen on the adjacent bank and dry land, as indeed may well be required by the founding legislation. In the internal comments revealed in the inquiry bundles, and in the responses given to the RYA on their comments on Rights of Way, the PLA emphasise the potential impeding of the public right of navigation and that it should remain unfettered. The PLA points out it "administers 95 miles of the tidal River Thames and this is an important tool in order to ensure that it remains available for use by all". This demonstrates clearly that the public the PLA have in mind is that able to enjoy an unfettered public right of navigation, ie those privileged enough to have boats or otherwise be on the water. This appears to disregard the very many more that seek to enjoy the Thames from the banks. Public Rights of Way are genuinely available for "use by all", and are to be encouraged on all 190 miles of river bank. This public should be seen as stakeholders too.

5.4 The parallel made by the PLA with docks and railway stations helps demonstrate the weakness of the PLA case. The legislation from 1949 that was quoted as precedent was concerned with potential interference with the access to goods yards, docks, wharves etc, ie the sorts of places then essential to the safe operation of the carrying of goods and trade. For much of the river there is no commercial river-related activity, and any no-go areas on the bank (like the working and potential reactivated wharves) are minimal and diminishing.

This applies most especially above Putney. The PLA's proposals are wider than the quoted precedent, going beyond active wharves and docks to have a blanket ban for all possible projections over tidal water and for all slipways, steps etc and other access points to the river. The justification given of possible interference that might affect and be valid for a small proportion of the bank in the lower river is disproportionate, and best handled on a case-by-case basis. The balance of public interest is in favour of unfettered access for the pedestrian to the river bank, with any new structures over/around tidal water designed to make that possible in safety. Enhanced access to the river is an expectation in Policy SI16 in the London Plan.

5.5 Part of the PLA's justification for this clause was about licensed works and the access routes to them, and avoiding the need to maintain those works after they ceased to be in active use. Arguments about the potential for abandonment of licensed structures would affect only a small subset of the places to be covered by the ban, and could be dealt with under other sections of the Act. If there is no other easy way round this sort of situation, an existing Public Right of Way could be extinguished, say with a specific HRO. So no need for a blanket ban.

5.6 Although the provisions are not to be made retrospective, there could well be established routes across the PLA land and waters that would now fail to achieve formal Public Right of Way status by prescription. There is no list to indicate what 'established' or almost established but not yet designated routes could be affected, again questioning the adequacy of the consultation.

5.7 Importantly, this proposal would mean entirely new routes could never achieve the status of public right of way. There are aspirations to have the Thames path along both banks of the river. There are some current gaps in the Thames path where completion over a footbridge over a small tidal tributary may be awaiting changed access to a section of bank, say that which could come with s106 and new development on riverside land (eg where the River Crane enters the Thames at the Hounslow/Richmond border). It is assumed that any new footbridge would be caught by this proposed ban. Sure enough, bridge design would have to take account of those small vessels that sometimes navigate any tributary, but that is not the same as always giving them absolute priority over the many thousands who could end up being denied having Right of Way access to a section of the river frontage.

5.8 It is not just existing sites for new riverbank structures, but potential new ones too. With sea level rise and global warming, the river flood defences will be being refashioned in response to the TE2100 predictions. Some areas of riverside land may be allowed to flood more often. This will require new pedestrian routes, sometimes raised paths and bridges over water claimed by the PLA. New slipways will be needed to ensure small craft can still launch in spite of raised flood defences. Permanent denial of Public Right of Way status in such circumstances is objectionable and has the potential to inhibit the funding needed for the capital works. The same inhibiting effect could inhibit any new pedestrian river crossings, still being promoted by some (like Richmond Council) for the upper tideway, where funding might depend on securing a Public Right of Way

5.9 There was no attempt at dialogue by the PLA on this point over the last 4 years, and no shifting in the PLA's fixed position. Comment received from National Trails on the draft of this

evidence from the RTS is attached, with their permission, at appendix 1. The PLA needs to think again. The RTS does not believe that this change satisfies the requirements of the Harbours Act for HROs.

6. The consultation, the tidal Brent and the Port limits

6.1 As soon as the formal consultation started, the RTS realised there was a discrepancy between the text of the proposed HRO and the accompanying chart in relation to the Port limits as they affected the tidal Brent and the extension of the Kensington Canal. Since we thought the consultation could be invalidated unless there was a correction, separate approaches were made about this to 2 directors of the PLA. The RTS was told it was too late to change anything. So in the formal response the RTS reply had to be "The additions and subtractions to the port limits are inconsistent between the text (Sch 1.1) and the explanatory map. The RTS cannot make valid comment without knowing which is right".

6.2 There were further exchanges on this issue, much of which can be found within bundle H, especially pages 66-77. There was also a remote meeting with the PLA's chief legal officer.

6.3 The **extension of the Kensington Canal** is of little concern, since we do not believe there could be any uncertainty over what was intended. The chart that accompanied the consultation in 2021 clearly shades in yellow the end of the Kensington canal to come out of the Port. This chart is more accessible than the text, which in small font appeared to have the canal still included within the port as "the remaining part of Chelsea Creek which originally formed part of the Kensington Canal". There should be little doubt about the intentions here. This small section of the Kensington Canal is no longer navigable and in practice has not worked as part of the port for some years: it was now to come out of the formal port limit. The text of the proposed HRO has now been corrected. We regard this issue as now closed.

6.4 The situation is more complicated for the **tidal Brent**, since it was the user-friendly chart that we now know was incorrect, rather than the small-print text to be found by the excessively curious on p121 of the marked-up Act. As the exchanges with the PLA indicate, this piece of water is very busy and whether or not it gets regarded as part of the Port could have significant implications for those living and working there. That the existing responsibilities are far from clear can be evidenced from: (a) the PLA's own chart 306 which shows a limit to the PLA responsibility at the mouth of the canal entrance but not also at the junction between the canal and horseshoe section of the tidal Brent; (b) the lack of the tidal Brent being detailed in any chart available on the PLA website, (c) the report from the planning inspector for compulsory purchases in the area (APP/PCU/CPO/F5540/77609) together with evidence before his inquiry, and (d) whoever in the PLA was responsible for signing off the documentation for the formal consultation.

6.5 In correspondence with the RTS, the PLA indicates that the tidal Brent has been their responsibility for years: we have no direct knowledge of this nor does it fall to us to confirm whether this is right. If the position in the HRO is in fact unchanged, it could be argued that there is no scope for any comments on this from the RTS or anyone else. It seems the public consultation on the HRO has increased rather than settled any existing uncertainties about

responsibilities. Had there been detailed local consultation of which we are unaware, this could negate our concerns about locals having been given false expectations by the consultation, for example over liabilities for river works licences. A correction to the chart was made available on the public website only in December 2024.

6.6 The onus should be on the PLA to persuade the MMO that the tidal Brent is without doubt their responsibility and is currently within the Port Limits, notwithstanding the muddied waters created by this consultation. Any objection here from the RTS is to the adequacy of the consultation process, both its content and extent: this raises questions whether the process to date has been adequate to meet the requirements in the Harbours Act 1964 for the introduction of HROs.

Appendix 1. **Public Rights of Way and the PLA's Harbour Revision Order (HRO)**

[Redacted] extract from email from Thames Path manager to RTS 28 Nov 2024

Thank you for your email and bringing this to my attention. It could have quite serious implications for any future improvements to the Thames Path.

I believe the RTS statement is comprehensive, and I cannot see any inaccuracies with regards to rights of way and I fully support the line being taken.

There are already provisions under Section 31(6) of the Highways Act 1980 to allow landowners to protect their land from claims for Public Rights of Way.

I wonder whether the Act would actually stop rights by prescription from being claimed, unless there is a clear sign on site. Someone could be enjoying a route without force, without secrecy and without permission and without knowledge of this act, therefore perhaps gaining the right. Whereas in relation to the Railway infrastructure in this country, it is fenced so any claim is likely to have involved force or secrecy. Your response in section 4 covers this well.

Diversions of Public Rights of Way can also be applied for under Section 119 of the Highways Act or as part of any planning process under the Town and Country Planning Act 1980, so that should not hinder any future operational needs.

It could be a benefit for a route to become official Right of Way as the surface could become vested in the Highway Authority for maintenance purposes rather than just falling to the PLA, which you have also covered in section 8.

The Thames Path was created under the National Parks and Access to the Countryside Act 1949, and it should have utilised existing PROW, which for the most part it does. However, in London there are numerous sections where the Landowner is granting a private right which can be problematic, such as the obstructed Thames Path in Tower Hamlets. We are therefore reliant on the London Plan for any future improvements to the Thames Path through development. There are numerous alignment improvements of the Thames Path which are signed but not officially mapped and are yet to go through an official variation order which is submitted to Defra/SoS by Natural England, some of these sections could be on PLA land.

I'm sure this will also affect the King Charles III England Coast path, which tends to follow both PROW and is also classed as open access within the coastal margin. It would be great if rivers could have a river margin, especially in the context of flooding.
King Charles III England Coast Path: manage your land in the coastal margin - GOV.UK