

Committee: Strategic Development	Date: 8 th November 2007	Classification:	Agenda Item No: 7.3
Report of: Corporate Director of Development and Renewal		Title: Planning Application for Decision and Consideration of Expediency of Taking Enforcement Action	
Case Officer: Rachel McConnell		Ref No: PA/07/02040	
		Ward(s): St Katherine's and Wapping	

1. APPLICATION DETAILS

Location: King Henry Stairs Wapping Pier, Wapping High Street, London

Existing Use: Mooring used as an operational base for a river cruise business.

Proposal: Replacement of the collar barge with pontoon. Installation of staff toilets, the relocation of the preparation kitchen's odour extractor, the relocation of the glass crusher, relocation of waste oil storage and installation of sewage and grey water tank.

Drawing Nos/Documents: DP(1), A/309/001/01001 Rev E, A/309/001/01002 Rev E, A/309/001/01003 Rev E, A/309/001/01004-01 Rev D, A/309/001/01004-02 Rev D, A/309/001/01005-1 Rev C, A/309/001/01005-2 Rev C, A/309/001/01006 Rev B, A/309/001/01007 Rev B, A/309/001/01008 Rev A, A/309/001/01009 Rev A, Site Context Plan

Applicant: Woods River Cruises

Ownership: PLA

Historic Building: n/a

Conservation Area: Wapping Pierhead

2 ENFORCEMENT DETAILS

Location: As above

Existing Use: As above

Breach of Planning Control: Material change of use to an operational base for a river cruise business, including office, storage, staff mess room, catering and associated waste storage facilities.

Applicant: As above

Ownership: As above

3 INTRODUCTION

- 3.1 Following concerns raised by residents, the Council carried out a detailed investigation into matters relating to the development and use of Wapping Pier that culminated in a report being published in February 2007.
- 3.2 The Report concluded that Wapping Pier, as a structure, is lawful and planning

permission was not required for it. However, the Report also concluded, on balance, planning permission was required for the existing use of the pier. Further, it recommended that Woods River Cruises submit a planning application for that use. The Report is attached as Appendix 1.

3.3 The current planning application submitted by Woods River Cruises relates only to the physical works and does not seek permission for their current use of the Pier. Woods River Cruises have taken the view that the operations at Wapping Pier do not amount to a material change of use. Our report does acknowledge that the law surrounding this matter is not clear. Therefore, Woods River Cruises are not unreasonable in taking the position they have. However, it remains the Council's position that planning permission is required for the current use.

3.4 Against this background, this report advises members both on the planning application submitted by Woods River Cruises for the physical works at Wapping Pier and also considers the expediency of taking enforcement action in relation to the current use of the pier which the Council considers is a breach of planning control.

4 SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

4.1 The Corporate Director has considered the particular circumstances of this application against the Council's approved planning policies contained in the London Borough of Tower Hamlets Unitary Development Plan (as saved September 2007), the Council's Interim Planning Guidance and the history of the site and has found that:

- a) The proposal will not harm the visual amenity of the area and will preserve the character of the Wapping Pierhead Conservation Area and not detract from the setting of the adjacent Listed buildings. This is in accordance with policy DEV2 in the UDP, policies DEV1, CON1 and CON2 in the Interim Planning Guidance which accords with policy 4b.11 in the London Plan.
- b) The proposal does not result in material harm to the amenity of residents in particular with regard to noise and smell. The proposal therefore meets the criteria set out in Policies DEV2 & DEV50 in the Unitary Development Plan and Policies DEV1 and DEV10 in the Interim Planning Guidance.
- c) In principle the proposed extension of Wapping Pier is acceptable and in line with GLA and Council policy which supports and encourages the use of the River Thames for maritime purposes. This complies with policies 3b.10, 3d.6 and 4c.24 in the London Plan which encourage the provision of a pier within the River Thames which serves tourism and leisure.
- d) The proposal would have no significant impact on the surrounding transport network. The proposal therefore complies with Policy T16 in the Unitary Development Plan and Policy CFR2 of the Interim Planning Guidance which seek to ensure that development proposals do not have an unacceptable impact on the transport system.

4.2 The Corporate Director has considered the particular circumstances of the breach of planning control against the Council's approved planning policies contained in the London Borough of Tower Hamlets Unitary Development Plan (as saved September 2007), the Council's Interim Planning Guidance and the history of the site and has found that:

- a) because there are no grounds to sustain a reason for refusal for the use as an operational base for a river cruise business, it is not expedient to take enforcement action in respect of the breach of planning control.

5 RECOMMENDATIONS

5.1 That the Committee resolve to **GRANT** planning permission and the Corporate Director Development and Renewal be given delegated power to impose conditions and informatives on the planning permission to secure the following:

1. Standard time limit
2. Hours of works (construction)
3. Construction method statement
4. No solid matter stored near river
5. Construction storage for oil, fuel and chemicals in accordance with submitted details to prevent pollution of the water environment
6. No light spill to protect wildlife habitats

Informatives

1. Environment Agency Informative

5.2 That the Committee resolve **NOT** to take enforcement action against the use as an operational base for a river cruise business because there are no grounds to sustain a reason for refusal subject to:

The completion of a legal agreement, to the satisfaction of the Chief Legal Officer, to secure the following:

1. Control activity during the night time

5.3 That if within 3 months of the date of this committee the legal agreement has not been completed, the Corporate Director Development and Renewal is given delegated power to serve an enforcement notice in respect of the use of the pier as set out in Section 2.

6 DETAILS OF PROPOSAL, SITE AND SURROUNDINGS AND PLANNING HISTORY

Proposal

6.1 *Physical works* –Planning permission is sought for the replacement of the collar barge with a pontoon, installation of staff toilets, the relocation of the preparation kitchen's odour extractor, the relocation of the glass crusher, relocation of waste oil storage and installation of sewage and grey water tank.

- 6.2 *Operational Use* - The Council's report published in February 2007 concluded that there has been a change of use of Wapping Pier by Woods River Cruises from a mooring facility to an operational base. The Council's view is that there has been a material change in the character and nature of activities at Wapping Pier, which is as the operational base for a river cruise business, including office, storage, staff mess room, catering and associated waste storage facilities. Full details are contained within the appended report.

Site and Surroundings

- 6.3 The application site comprises a set of linked installations situated off and connected to the northern bank of the River Thames known as Wapping Pier. The site is accessed from a public highway leading to King Henry's Stairs from Wapping High Street between Swan Wharf to the west and King Henry's Wharf to the east. King Henry's Stairs no longer exist, long since having rotted away.
- 6.4 Wapping Pier lies wholly within the Wapping Pierhead Conservation Area and there are Grade II Listed buildings to the north, including King Henry's Wharf and Gun Wharf.
- 6.5 The various elements of Wapping Pier are as follows:
- Tunnel Pier (original part of the complex)
 - Tower Pier
 - The Steel Piles
 - The Collar Barge
 - The Berthing Dolphin
- 6.6 Further details of the evolution of the Pier are set out in the appended report.

Planning History

- 6.7 The following planning decisions are relevant to the application:
- 6.8 PA/00/00085 – Replacement of existing timber pontoon guides with two new steel piles to secure the pontoon (30 March 2000) – planning permission granted
- 6.9 PA/07/00475 - Request for Screening Opinion as to whether a planning application for the use of the pier as an operational base for a river cruise business including office, storage, staff mess rooms, catering and associated waste and recycling storage requires an Environmental Impact Assessment (4 May 2007) – EIA not required
- 6.10 Report under Section 171 of the Town and Country Planning Act 1990 into Matters Relating to the Development and Use of Wapping Pier (February 2007). The report concluded that planning permission was required for the operational use of Wapping Pier. However it concluded that the physical works that had been carried out at the Pier were either lawful as they were carried out by the PLA (a statutory undertaker) under the General Permitted Development Order, by Woods River Cruises under planning permission PA/00/00085 or they have been there a sufficient length of time to be immune from enforcement action.

7 POLICY FRAMEWORK

7.1 Unitary Development Plan (as saved September 2007)

Proposals:	(1)	Flood Protection Area
	(2)	Areas of Archaeological Importance
	(3)	Site of Nature Conservation Importance
	(4)	Strategic Riverside Walk
Policies	DEV1	General Design
	DEV2	Environmental Requirements
	DEV26	Small Scale Proposals
	DEV43	Protection of Archaeological Heritage
	DEV44	Preservation of Archaeological Remains
	DEV46	Riverside, Canalside, Docks and Other Water Areas
	DEV49	Moored Vessels and structures
	DEV50	Noise
	DEV55	Development and Waste Disposal
	DEV56	Waste Recycling
	DEV57	Development Affecting Nature Conservation Areas
	EMP6	Employing Local People
	EMP8	Encouraging Small Business Growth
	T16	Traffic Priorities for New Development
	U2	Development in Areas at Risk from Flooding
U3	Flood Protection Measures	

7.2 Interim Planning Guidance for the purposes of Development Control

Proposals:	(1)	Flood Risk Area
	(2)	Site of Importance for Nature Conservation (Sites of Borough Importance – Grade 1)
	(3)	Blue Ribbon Network
	(4)	Conservation Area
	(5)	Area Action Plan Boundary (City Fringe)
Policies:	CP1	Creating Sustainable Communities
	CP2	Equality of Opportunity
	CP3	Sustainable Environment
	CP5	Supporting Infrastructure
	CP7	Job Creation and Growth
	CP9	Employment Space for Small Businesses
	CP11	Sites in Employment Use
	CP12	Creative and Cultural Industries and Tourism
	CP14	Combining Employment and Residential Use
	CP31	Biodiversity
	CP33	Sites of Importance for Nature Conservation
	CP36	The Waterside Environment and Waterside Walkways
	CP37	Flood Alleviation
	CP39	Sustainable Waste Management
	CP41	Integrating Development with Transport
	CP45	The Road Hierarchy
	CP46	Accessible and Inclusive Environments
	CP49	Historic Environment

DEV1	Amenity
DEV2	Character and Design
DEV10	Disturbance from Noise Pollution
DEV11	Air Pollution and Air Quality
DEV15	Waste and Recyclables Storage
DEV17	Transport Assessments
DEV19	Parking for Motor Vehicles
DEV21	Flood Risk Management
DEV57	Development affecting Nature Conservation Areas
EE2	Redevelopment/Change of Use of Employment Sites
EE3	Relocation of Businesses outside of Strategic Industrial Locations and Local Industrial Locations
OSN3	Blue Ribbon Network and the Thames Policy Area
CON1	Listed Buildings
CON2	Conservation Areas
CFR1	City Fringe Spatial Strategy
CFR2	Transport and Movement
CFR8	Waste
CFR21	Employment uses in Wapping sub-area

7.3 **Spatial Development Strategy for Greater London (London Plan)**

3b.10	Tourism Industry
3c.2	Matching Development to Transport Capacity
3d.6	Visitors Accommodation and Facilities
3d.12	Biodiversity and Nature Conservation
4b.1	Design
4b.10	London's Built Heritage
4b.11	Heritage Conservation
4b.12	Historic Conservation-led regeneration
4b.14	Archaeology
4c.1	The Strategic Importance of the Blue Ribbon Network
4c.2	Context for Sustainable Growth
4c.3	Natural Value of the Blue Ribbon Network
4c.10	Historic Environment
4c.11	Conservation Areas
4c.12	Use of water for transport, leisure and recreation
4c.13	Passenger and Tourism Uses
4c.16	Increasing Sport and Leisure Use of the Blue Ribbon Network
4c.19	Mooring Facilities on the Blue Ribbon Network
4c.23	Safety on and Near to the Blue Ribbon Network
4c.24	Use of Thames to promote greater use of water based leisure

7.4 **Government Planning Policy Guidance/Statements**

PPS1	Delivering Sustainable Development
PPG4	Industrial, Commercial Development and Small Firms
PPG13	Transport

PPG15	Planning and the Historic Environment
PPG16	Archaeology and Planning
PPG24	Planning and Noise

7.5 **Community Plan**

The following Community Plan objectives relate to the application:

A better place for living safely

A better place for living well

A better place for creating and sharing prosperity

A better place for learning, achievement and leisure

8 CONSULTATION RESPONSE IN RESPECT OF THE PLANNING APPLICATION

8.1 The views of officers within the Directorate of Development and Renewal are set out in the MATERIAL PLANNING CONSIDERATIONS section below. The following were consulted regarding the application:

1) LBTH Environmental Health

8.2 Noise-

- No objection to noise during daytime - the activities from Woods River Cruises do not cause Noise Nuisance.
- Initial Noise Assessment Report by URS dated 10/08/2007 was materially deficient. The amended Noise Report from URS dated 19/10/2007 and its contents show that there will be some noise nuisance from Woods River Cruises on the local residents during night time.
- Relocation of extract system away from sensitive residential facades will help to mitigate noise impact during the night.
- The activities of Boat 2 (Barracuda and Kitchen Extract Fan) are above the criteria set in BS4142 which is the conclusion reached by URS Consultant in his report.

8.3 Odour – Assessment satisfactory

8.4 Refuse – the application has no implications for refuse collection.

8.5 Food Hygiene – Advises standards regarding food handling and preparation

2) LBTH Highways

8.6 No objection

3) The Inland Waterways Association (Statutory Consultee)

8.7 No objection - positively welcome this development of passenger boat facilities.

4) Port of London Authority (Statutory Consultee)

8.8 The PLA has no objections to the application as submitted. Advises that in addition to planning permission, the approval of the PLA under the Port of London Act 1968 (as amended) will be required.

5) Environment Agency (Statutory Consultee)

8.9 Raises no objection to the proposed development subject to conditions to prevent pollution and minimise disruption to wildlife during the construction process.

6) English Heritage (Statutory Consultee)

8.10 No comments.

7) Transport for London (Statutory Consultee)

8.11 The proposal would not result in any unacceptable impact on the TLRN or SRN.

8) Thames Water (Statutory Consultee)

8.12 No objection with regard to sewage infrastructure and water infrastructure.

9 LOCAL REPRESENTATIONS

9.1 A total of 130 neighbouring properties within the area shown on the map added to this report were notified about the application and invited to comment. The application has also been publicised in East End Life and on site.

9.2 No of individual responses: 30 Objecting: 29 Supporting: 1

9.3 The following issues were raised in representations that are material to the determination of the application, and they are addressed in the next section of this report:

Noise Nuisance

- Noise nuisance from:
 - structures hitting one another (mainly collar barge) as mooring lines inadequate
 - glass crusher
 - staff activity
 - collection of waste
 - dinghy (used to transport staff)
 - chains anchoring the barges
 - vessels delivering fuel & stores
 - engines revving
 - maintenance
 - equipment poorly secured
 - extraction fan
- No evidence in report to suggest that the proposal will alleviate noise issues - 24 hour operation not appropriate in this location;
- Noise report submitted is flawed;

Other Impacts

- Unacceptable odour from:
 - cooking (frequent)
 - rubbish
 - exhaust fumes
 - fumes from refuelling
- Odour assessment not adequate – location chosen for testing not near to residential properties;
- New kitchen extractor will increase possibilities of unpleasant cooking odours;
- Catering and non-admin activities could be moved onshore - would not jeopardise business/employment;
- No need for toilets to be provided on Pier – location not satisfactory;

Visual Amenity

- Unightly -Inappropriate development in a Conservation Area and adjacent to Listed Buildings;
- The site has over expanded ;

Waste, sewage etc

- Waste collection and storage contributes to pollution;
- Sewage tank pumped by boat is unacceptable – potential noise and pollution;
- Waste and maintenance should be moved to a non-residential area - Proposals for handling waste are inadequate;
- Danger of spillage and contamination from sewage and oil storage - debris and sewage around the Pier;
- Proposals for storage of full and empty gas cylinders are hazardous.
- Site used as general dumping ground;

Highways Impacts

- Traffic noise, hold-ups and pollution in Wapping High Street – in particular from deliveries;
- Transport will be worse when East London Line closed ;
- Transport assessment submitted is inadequate – does not take into account vehicles blocking Wapping High Street.
- Vehicles illegally parking – blocking highway;

Issues relating to Lawful Use

- Not appropriate activity on any part of the Thames;
- No assurance that the barge will not reappear;
- Abuse of permitted development rights - Activities have intensified;
- Restrictions should be imposed regarding the use of the pontoon;
- Failing in statutory duties to not take enforcement action;
- Rightful use is as riverbus public passenger pier.

Other Issues

- No justification for further extension of the Pier;
- Erosion – should require annual erosion inspections of adjacent buildings;
- No explanation why EIA not required;
- Some physical works excluded in the Council's report, including:
 - locked pier entrance gate
 - storage area next to entrance gate
 - removable street bollards
 - refuse containers on public highway

Representations in Support

- The additions to vessels and hardware do not amount to a change of use;
- Support the river being used professionally;
- No objection to the current operation;

9.4

Comments have been received prior and during the course of the application with regard to our conclusions relating to the law. Most of these issues were raised prior to the Council's report being issued in February 2007 and were therefore taken into account when completing the report. The Director sees no

reason in the light of the further representations made to alter the conclusions there set out, although matters have moved on in the sense that Woods River Cruises have declined to make a planning application in respect of the current use.

9.5 The following issues were raised in representations, but they are not material to the determination of the application:

- Loss of view;
- Devaluation of property;
- No public access;
- Licensed use is as a mooring only.

9.6 The following procedural issues were raised in representations, and are addressed below:

- The time it has taken to submit an application and application submitted not for change of use (OFFICER COMMENT: It is not possible to make a person submit a planning application)
- Enforcement Action should have already been taken. Collar barge now permitted development (OFFICER COMMENT: This report considers the expediency of taking enforcement action against the change of use. The Council's view is that the collar barge is lawful as it benefits from permission under the Town and Country Planning (General Permitted Development Order) 1995. It was expected that an application would be submitted by Woods River Cruises for the change of use to an operational base for a river cruise business but did this not transpire)
- Missing information on submitted plans (OFFICER COMMENT: The plans showing the existing layout clearly show all structures. The plans submitted considered acceptable to determine application)
- Grade II Listed Buildings not shown on plan in Design and Access Statement (OFFICER COMMENT: An application can not be made invalid due to the quality of the Design and Access Statement. Comments have been noted)
- Permission cannot be granted for works that are required in relation to activities that are unlawful (OFFICER COMMENT: This is addressed in section 11.1-11.4)
- The report published by the Council in February 2007 is inaccurate – questionable use of permitted development rights (OFFICER COMMENT: The report provides the Council's view to the use and expansion to Wapping Pier. Legal advice was sought when compiling this report. The report is appended)
- Process of carrying out Conservation Area Appraisals (OFFICER COMMENT: Not a consideration when determining this application)
- LBTH and Statutory Consultees misled by applicants – not submitted planning application for change of use (OFFICER COMMENT: This report considers the expediency of taking enforcement action against the change of use)
- Notice not served on all owners (OFFICER COMMENT: This matter has been drawn to the attention of the applicant)

10 CONSIDERATION OF EXPEDIENCY OF TAKING ENFORCEMENT ACTION

10.1 Government advice in the form of Circular 10/97 (Enforcing Planning Control) states that *“The power to issue an enforcement notice is discretionary...it should only be used where the LPA are satisfied that there has been a breach of planning control and it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.”*

10.2 In its report published in February 2007, the view was taken that there has been a breach of planning control. The Director remains of this view. However, it is still necessary to consider, in accordance with Government guidance, whether it is appropriate to take enforcement action. This involves a consideration of the planning merits of the unauthorised development – in effect, members need to consider the matter as if Woods River Cruises had, as they were requested to, made an application in respect of the use.

Description of development

10.3 Full details of what has happened are set out in the report published in February 2007. In summary, there has been a change from mooring vessels at a pier which had merely two staff undertaking a number of office functions to use containing a head office function, kitchen facilities and a bigger overall operation (see paragraph 5.56 of the report).

Planning considerations

10.4 The main planning issues raised by the use of Wapping Pier are:

1. Principle of the Development
2. Impact on Residential Amenity
3. Highways Issues
4. Other Issues

1. Principle of the Development

10.5 The principle of the development of Wapping Pier as an operational base for a river cruise business is supported by policies 3b.10, 3d.6 and 4c.24 in the London Plan which encourage the provision of a pier within the River Thames which serves tourism and leisure.

10.6 Policy EMP8 in the UDP encourages the growth and expansion of new or expanding businesses where a proposal meets other policy requirements. The development of the Pier as an operational base is in accordance with the principle of this policy which seeks to encourage the development of small businesses.

10.7 It is acknowledged that Policy DEV49 in the UDP requires that proposals for moored vessels and structures in or over river areas must be essential to the movement of goods or passengers by water. However, the provision of office and cooking facilities on Wapping Pier is directly linked to the function as an operational base for a river cruise business. The proposal is therefore in accordance with the requirements of this policy.

10.8 Given the above, there is clear policy support for the use of Wapping Pier as an operational base for a river cruise business.

2. Impact on Residential Amenity

10.9 Even if the principle of development is acceptable, it may still not be appropriate to permit it (or to take no enforcement action in respect of it) because of its impact on residential amenity. Of particular relevance are Policies DEV2 and DEV50 in the Unitary Development Plan and Policies DEV1 and DEV10 in the Interim Planning Guidance which seek to protect the amenity of residents. The main objections raised by residents to the change of use relate to noise and smell.

Noise

10.10 The starting point when considering the impact on residential amenity is to understand the nature of the area. For example, acceptable noise levels within a mixed-use town centre area will be different to a purely residential location. Wapping Pier is located adjacent to former and existing industrial and commercial buildings, some of which have been converted to residential use. The River Thames is an active river where activity will generate some noise. The change of use of the Pier needs to be considered in the context of that environment. Noise may be considered acceptable here which might not be considered acceptable in a purely residential environment. On the other hand, it would not be appropriate to allow development in such a location irrespective of the noise it caused. A reasonable balance has to be struck.

10.11 A noise report prepared on behalf of Woods River Cruises¹ demonstrates that the noise levels during the daytime are acceptable given the location of Wapping Pier on an active river where there is some ambient noise. However, unacceptably high levels of noise have been detected during the night. The Wapping Pier Noise Assessment Report dated 19 October 2007 concludes that noise generated by Boat 2 (Barracuda), from both berthing and servicing of the boat, and from the kitchen fan noise are above the British Standard 4142 'marginal significance' level for noise generation but below the 'complaints likely' level. The Director is satisfied having consulted with the Environmental Health Officer, that the Report and its conclusions are broadly accurate.

10.12 Woods River Cruises have advised that in principle they would be willing to enter into a legally binding agreement which would essentially impose restrictions similar to a planning condition on the hours of operations of Wapping Pier and require that the appropriate sound mitigation measures implemented.

10.13 It is recommended that a legal agreement restricts the usage of Wapping Pier during the night (23:00 to 7:00), requiring that the following activities are not be carried out during these times:

- no cooking shall take place in the pier kitchen or in any craft moored at the Pier;
- and no glass crushing shall take place on the pier or on any craft moored at the Pier;

¹ At the time that the planning application was first being prepared, Woods River Cruises were proceeding on the basis that planning permission would be sought for the use. The decision to apply for permission only in respect of the physical works was taken late in the process and some of the material submitted to justify the use was not of course relevant to the application that was ultimately submitted. However the information is still relevant to the Council in respect of its consideration whether to take enforcement action – in particular, the submitted reports in respect of noise, smell and highways.

- no rubbish moved and no loading or unloading of food, drink and other catering paraphernalia.

10.14 The proposed measures accord with the advice in Planning Policy Guidance Note 24: Noise. It is considered that these mitigation measures will address many of the concerns raised by local residents and identified in the noise report.

10.15 The Wapping Pier Noise Assessment Report dated 19 October 2007 does conclude that there is noise generated by berthing of Boat 2 (Barracuda) above BS4142 'marginal significance' level. However given that the pier is located on an active river and can lawfully be used as a mooring facility, the levels of noise are considered reasonable.

10.16 As set out above, Woods River Cruises have indicated that they are willing to enter such an agreement. Were they to decline to do so, or were it to prove not possible to agree the terms of such an agreement, the Director would bring the matter back to Committee with a recommendation that enforcement action be taken.

Smell

10.17 The main issues relating to smell raised by residents are in respect of cooking smells coming both the boats and also from the kitchen located on the Pier. Woods River Cruises have submitted an odour report. This has been prepared by URS Corporation Ltd. It states that::

'The site was visited on two separate days, both the morning and afternoon, during a particularly busy operational time for the pier ...Assessments were undertaken whilst food was being prepared in the prep kitchen and boats were moored, representing a worst-case operational scenario.

Meteorological conditions were also favourable to odour detection, with a gentle to moderate wind blowing from source to receptor during both survey days.

It is considered unlikely that odour complaints received from local residents under normal operational conditions are justified – as the EPA 1990 notes, complaints made against an odour emitting facility do not automatically imply that there is a statutory nuisance.'

10.18 The Council's Environmental Health Officer who has visited the site on a number of occasions considers that the report and its conclusion are essentially correct. It is therefore reasonable to conclude that smells emanating from the site are not at unacceptable levels.

10.19 Other sources of smell referred to by residents include exhaust fumes and odour from refuelling. Both of these circumstances could occur under the lawful use as a mooring facility and it is not considered that such smells occur with such frequency or are intrinsically so unacceptable that enforcement action should be taken in respect of the use on account of them.

Conclusion on impact on residential amenity

- 10.20 It is considered that provided that the applicant enters into a legal agreement as detailed above, the unauthorised development will not result in material harm to the amenity of residents. The proposal therefore meets the criteria set out in Policies DEV2 & DEV50 in the Unitary Development Plan and Policies DEV1 and DEV10 in the Interim Planning Guidance.

3. Highways Issues

- 10.21 The development is served by Wapping High Street where on-street parking is controlled. The traffic assessment submitted by Woods River Cruises concludes that:

'The transport statement has demonstrated that Wapping Pier is located in an area well located in terms of pedestrian and cycle access from residential areas, as well as key public transport routes from a variety of residential locations. Parking restrictions in the area also limit employees at the pier from driving to the site as a means of commuting.'

'It is concluded that the use of the pier does not have a material impact on the operation of Wapping High Street with low levels of movement, even during the peak hours.'

- 10.22 The impact on the highway has also been assessed by LBTH Highways department who have raised no objection to the use of Wapping Pier as an operational base. The scale of the use is controlled by the capacity of the mooring and is comparatively small.
- 10.23 The temporary closure of the East London Line is not considered to have material implications with regard to the use of Wapping Pier.

4. Other Issues

- 10.24 Matters relating to the pollution of the Thames which might occur through the operational use of the Pier are covered by legislation outside the remit of planning.
- 10.25 Concern has been raised that the not all physical works were addressed in the Council's report issued in February 2007. The works so identified include the locked pier entrance gate, storage area, removable street bollards and storage refuse containers on public highway. It is considered that these works are ancillary to the operational use of the pier and relatively minor.

5. Conclusion

- 10.26 The use of Wapping Pier is in accordance with policy. There is no basis for objection based on amenity, highway or any other grounds apart from a concern in respect of night-time noise. This is capable of being addressed by a legally binding agreement and Woods River Cruises have said that, in principle they are willing to enter such an agreement. In these circumstances the Director considers that it would not be expedient for the Council to take enforcement action.

11 ASSESSMENT OF THE CURRENT PLANNING APPLICATION

Introduction

- 11.1 The planning application submitted by Woods River Cruises seeks permission solely for physical works to Wapping Pier, namely the replacement of the collar barge with pontoon, installation of staff toilets, the relocation of the preparation kitchen's odour extractor, the relocation of the glass crusher, relocation of waste oil storage and installation of sewage and grey water tank.
- 11.2 It is the Council's view that planning permission is required for the existing use of Wapping Pier. The February Report considered that on balance there has been a material change of the Pier by Woods River Cruises. However, as the position is not altogether clear, submitting an application solely for the physical works to the Pier is not an entirely unreasonable position for Woods River Cruises to have adopted.
- 11.3 With regard to determining the current planning application, an application for physical works that relates to a use that may not be lawful can be considered if the works are relatively minor in terms of their physical impact. The main element of this planning application is for the replacement of the collar barge with a pontoon. This is to provide a mooring facility, which would be in accordance with the lawful use of Wapping Pier. Given that the nature and scale of the other elements within the application are relatively minor, it is considered that it would not be unreasonable in this instance to consider the planning application in isolation from the use.
- 11.4 It should be noted that the application was prepared by the applicants on the basis that planning permission would be sought for the use. The decision to apply for only the physical works was taken late in the process and some of the material prepared and submitted to justify the use is therefore not relevant to the application that was finally submitted. This information however will be useful for considering the expediency of taking enforcement action.
- 11.5 Note that the replacement of the collar barge with a pontoon to provide a mooring facility would be in accordance with the lawful use of the pier.

Planning Considerations

- 11.6 The main planning issues raised by the current planning application are:

- 1 Design and Visual Amenity
2. Noise Issues
3. River Enhancement
4. Other Issues

- 11.7 **1. Design and Visual Amenity**
Policy DEV1 in the Unitary Development Plan and DEV 2 in the Interim Planning Guidance are concerned with the impact of the design of the development on the character of the Borough. Policies CON 1 and CON 2 in the Interim Planning Guidance seek to ensure that developments will not have an adverse impact on the setting of a Listed Building and will maintain the existing architectural and historic character of Conservation Areas.

- 11.8 The proposed pontoon is sited parallel to the pier and replaces an existing collar barge. There will be no additional projection into the river when compared with the existing facilities. It is considered that the design of the pontoon is in keeping with the existing pier and being an open structure will allow views through the side railings.
- 11.9 The installation of staff toilets, relocation of the preparation kitchen's odour extractor, glass crusher, waste oil storage and installation of sewage and grey water tank are relatively minor works that will not significantly alter the overall appearance of the Pier.
- 11.10 It is considered that the proposal will preserve the character of the Wapping Pierhead Conservation Area and will not detract from the setting of the adjacent Listed buildings to the north in accordance with policies CON1 and CON2 in the Interim Planning Guidance.
- 11.11 Given that the main element of the proposal is to replace an existing barge with a pontoon, it is considered that any harm to the visual amenity of nearby residents will not be increased by the proposal. The proposal therefore meets the requirements of Policy DEV1 in the UDP and Policy DEV2 in the Interim Planning Guidance with respect to design and visual amenity issues.

2. Amenity Issues

- 11.11 Policy DEV2 in the Unitary Development Plan and Policy DEV1 in the Interim Planning Guidance require that the impact of development on the amenity of residents and the environment generally has been fully considered. Policy DEV50 in the Unitary Development Plan and DEV10 requires consideration to be given to noise generated from developments.
- 11.12 The main potential noise concern associated with this planning application is considered to be intermittent noise from the pontoon banging against the mooring point and from the chain moorings. It should be noted that the existing collar barge is immune from planning control and this planning application provides an opportunity to improve the existing situation. The plans indicate that all pile guides are to be fitted with low friction energy absorbing rubbers to minimise noise.
- 11.13 The relocation of the preparation kitchen's odour extractor to face away from residential properties will be an improvement on the existing situation and the Council's Environmental Health Officer has raised no objection to this aspect of the proposal. The relocation of glass crusher will have no greater impact with regard to noise than the existing circumstance.
- 11.14 The Director considers that, subject to the imposition of appropriate conditions, the proposal will not result in material harm to the amenity of residents. The proposal therefore meets the criteria set out in Policies DEV2 & DEV50 in the Unitary Development Plan and Policies DEV1 and DEV10 in the Interim Planning Guidance.
- 11.15 Noise issues relating to the use of Wapping Pier as an operational base for a river cruise business have been considered in sections 10.9-10.16 above.

3. River Enhancement

- 11.16 The provision of a pier within the River Thames which serves tourism and leisure is supported by policies 3b.10, 3d.6 and 4c.24 in the London Plan. The expansion of existing businesses is supported by Policy EMP8 in the UDP. There is no requirement that there should be a need for additional facilities.
- 11.15 The PLA is responsible for navigational issues and for licensing both construction work and the continuing use of the moorings. The PLA have raised no objection to the application.
- 11.16 Policy DEV46 resists development that will have an adverse impact on the water environment. Given that no objection has been raised by both the PLA and the Environment Agency, it is considered that the proposal will not have an adverse impact on the ecological value and landscape value of the waterway.

4. Other Issues

- 11.17 The proposal for physical works is considered to have no significant impact on the surrounding transport network. The provision of toilet facilities on the Pier is considered ancillary to the function of the Pier.
- 11.18 Relocation of waste water storage and sewage will have minimal visual impact and is considered acceptable. No objection has been raised by Thames Water to the application. The Environment Agency has recommended conditions to prevent the pollution of the water environment.
- 11.19 The application proposes to relocate the preparation kitchen's odour extractor to face away from residential properties. This is considered to be a fundamental improvement on the current situation.
- 11.20 Concern has been raised that the barge may be retained in addition to the proposed pontoon. If it were so retained, this would constitute development. The PLA could carry this out under their permitted development rights, but Woods River Cruises would need planning permission from the Council to carry out such a development. The current application has to be considered on its merits, which means that weight cannot be given to speculation as to what may happen in the future.
- 11.21 Concern has also been raised about erosion. The Director considers that it is unlikely that any erosion as a result of the proposal Pier would be sufficient to sustain a reason for refusal. The Environment Agency and PLA raise no objection.
- 11.22 A Screening Opinion was carried out to determine whether an Environmental Impact Assessment (EIA) was required. It was determined that an EIA was not required (See Planning History at paragraph 6.9 above).

Conclusion

- 11.23 The Corporate Director considers that it is appropriate that planning permission be granted subject to appropriate conditions.