

# **LONDON BOROUGH OF TOWER HAMLETS**

## **REPORT UNDER SECTION 171 OF TOWN & COUNTRY PLANNING ACT 1990**

### **INTO MATTERS RELATING TO THE DEVELOPMENT AND USE OF WAPPING PIER**

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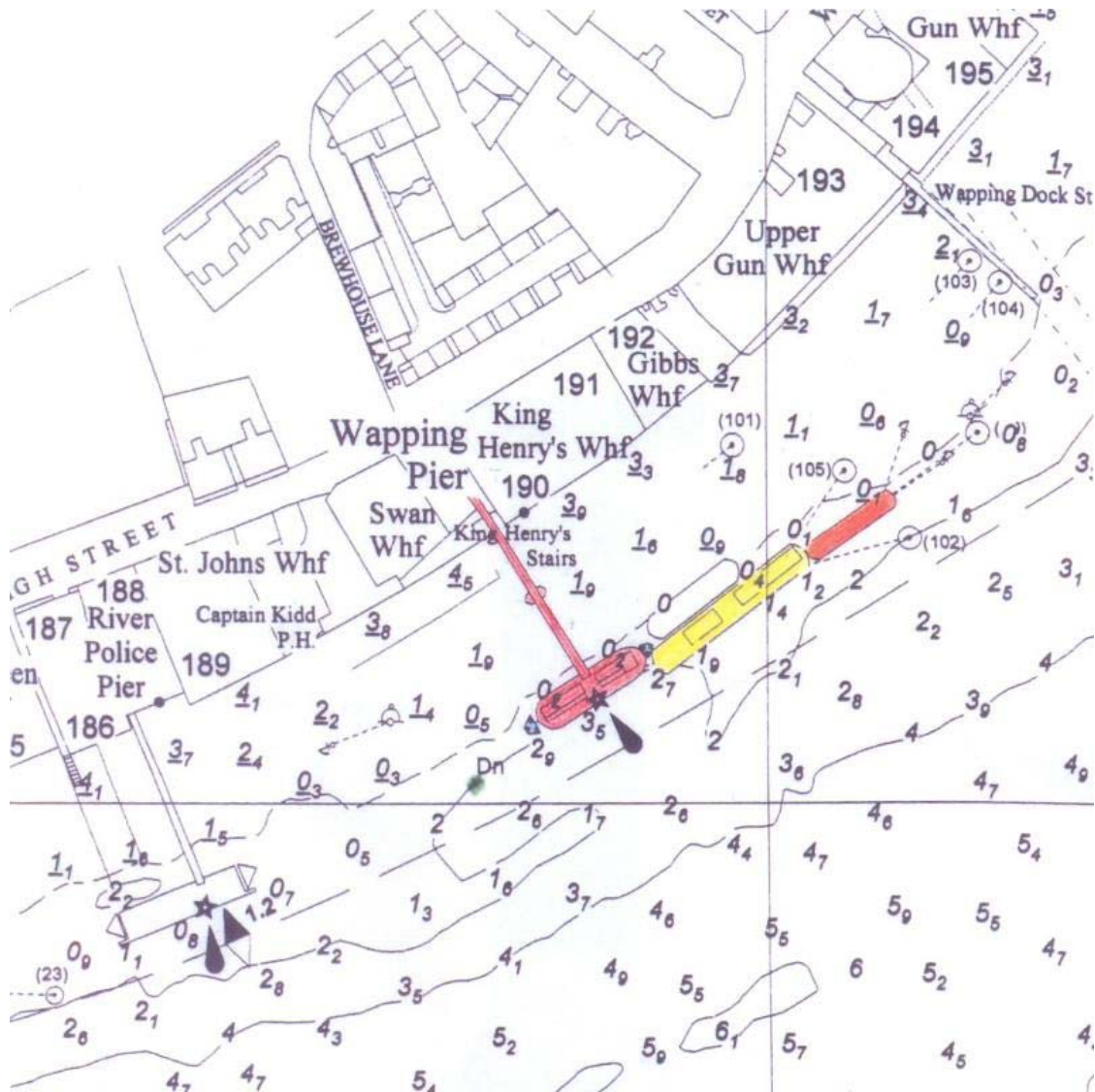
5 February 2007

## **1. INTRODUCTION**

- 1.1. The Council is considering the expediency of taking enforcement action regarding the development of Wapping Pier pursuant to the provisions of Part VII of the Town & Country Planning Act 1990 (as amended) (the "1990 Act") in accordance with the guidance issued by the Department for Communities and Local Government ("DCLG"), as set out in Circular 10/97: Enforcing Planning Control and its associated explanatory note – Planning Policy Guidance ("PPG") Note 18: Enforcing Planning Control.
- 1.2. In conjunction with this, the Council is considering the issue of whether any steps are to be taken regarding the development of Wapping Pier under the provisions of the Town & Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, in accordance with the guidance issued by the Department of Communities and Local Government (DCLG), as set out in Circular 02/99: Environmental Impact Assessment and its associated explanatory note – Note on Environmental Impact Assessment Directive for Local Planning Authorities.
- 1.3. The purpose of this report is to consider the evidence assembled during the investigation of the case. The analysis is based on the examination of this evidence. This will involve setting out the relevant legislation and testing the assembled evidence against the provisions of the relevant statutes, regulations and guidance.
- 1.4. For the avoidance of doubt, no earlier position or opinion is to be relied upon. As such, the case will be considered from first principles.

## 2. SITE DESCRIPTION

- 2.1. Wapping Pier comprises a set of linked installations occupied by Woods River Cruises ("WRC"). The complex is situated off and connected to the northern bank of the River Thames at Wapping, in the London Borough of Tower Hamlets.
- 2.2. The complex 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.
- 2.3. The Wapping Pier site complex lies wholly within the Wapping Pierhead Conservation Area.
- 2.4. The various elements of the Wapping Pier complex are, as follows:
  - a) Tunnel Pier – coloured red on the site plan - comprises the original part of the complex together with the gangplank access to/from the river bank at King Henry's Stairs.
  - b) Tower Pier – coloured yellow on the site plan - comprises a portion of the complex which was previously moored upstream of Tower Bridge in The Pool of London and is now moored downstream of Tunnel Pier.
  - c) The Steel Piles - coloured blue on the site plan - these were replacements for earlier wooden piles used to guide the rise and fall of Tunnel Pier on the tide.
  - d) The Collar Barge – coloured orange on the site plan - comprises the 'dummy' barge secured by river-bed screws and moored downstream of Tower Pier.
  - e) The Berthing Dolphin – coloured green on the site plan - comprising three steel piles –installed to the upstream side of Tunnel Pier and thought to facilitate the berthing of the mv Silver Sturgeon.



Site Plan of Wapping Pier

### **3. THE ISSUES**

- 3.1. A number of documents have been received by the Council evidencing/containing complaints regarding Wapping Pier.
- 3.2. The purpose of this section is to raise the issues brought forward by complainants, as a basis for the terms of the investigation, analysis and findings that follow further on in this report. It is not intended to represent an exhaustive or comprehensive schedule of the submissions, notes, letters and e-mails received on this matter.
- 3.3. The following represents a summary of the complaints prior to the commencement of this investigation:

#### **a) Bjuvman – Gun Wharf Residents Association**

Objects to the transition from moorings to operational base. No firm proposals for the toilets and disposal of black and grey water, refuse or recyclables. Relocate kitchen extractor fans to river side of the kitchen. Proposes limitations on: number of people working full-time on the Pier; hours of use; number of toilets; and noise output. As Pier is a conservation area, situation should return to early 1990s status without Downstream Collar Barge and Tower Pier pontoon. Offices to be made subject to same Health & Safety Regulations, as if on land.

#### **b) Neesom – 9 Gun Wharf**

Objects to the Downstream Collar Barge extension. Considers operational base not precise. Uncertainty of provision for rubbish storage and disposal. Objects to location of this provision on a barge and proposes it should be on land. Toilets and sewage holding tanks should be on land.

#### **c) Sayers – Flat 3, 124 Wapping High Street**

Raise each of the concerns relating to: rubbish collection, handling and disposal; water treatment and sewage issues; noise issues in terms of time-of-day and noise levels; smells and associated issues relating to meal preparations; siting of the complex in a conservation area and adjacent to listed buildings to the detriment of the character and appearance of this sensitive location; general issue on the enlargement of the facilities and the change from moorings to operational base. Thus consider the development of the Pier is not permitted development. Submits that the works should be “screened”, as they require an Environmental Impact Assessment, falling under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999.

#### **d) Shaw – 34 Gun Wharf**

Complains about times of noise generation – comprising barge movements, staff calling, extractor fans, returning customers - all day and at night. Complains about cooking smells, sewage and waste food not being properly stored.

e) **Westcott – 23 Gun Wharf**

Objects to the transition from mooring pier to operational base.  
Objects to the noise and pollution from the use.

f) **You – 15 Gun Wharf**

Lack of any conservation area consent for the Pier and its extensions. Concerned by storage of rubbish and recyclables. Loss of view. Unsightly collection of buildings. Objects to the use of GPDO powers for such significant extensions. Queries whether operational land extends to moored barges and pontoons. Queries whether the works are required for purposes of shipping or embarkation / disembarkation of passengers' etc. Queries whether offices for marketing, sales accounts required for handling of traffic. Objects to extension of Pier. Objects to moorings 150m downstream.

## 4. THE LEGAL BACKGROUND

### Introduction

- 4.1. This section of the report sets out the framework of statutes, regulations and guidance that are relevant to a consideration of the planning position of Wapping Pier, and to those issues raised by the complaints received and listed in section 3 of this report.
- 4.2. The starting point is the definition of ‘development’, which is set out in section 55(1) of the Town & Country Planning Act 1990 (the “**1990 Act**”):

*“... the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”*
- 4.3. This definition is comprehensive and exhaustive i.e. it is inclusive of all manner of development. However, the 1990 Act also sets out – in section 60 – provisions for the Secretary of State to determine that certain types of ‘development’ are ‘permitted’ i.e. although these types of development are ‘development’, there is no requirement to seek formal planning approval in order to undertake them, provided that the specific requirements of the permission are satisfied. So, these types of development are not brought under the control of the Local Planning Authority (the “**LPA**”) by virtue of being “permitted”. The various classes of development that are permitted by regulation are set out in the Town & Country Planning (General Permitted Development) Order 1995 (the “**GPDO**”).
- 4.4. ‘Permitted development’ is a set of classes of specific types of ‘development’, generally defined by thresholds of size and often conditioned by terms of constraint, which the LPA in most cases must merely acknowledge (because the type of development is not within their control).
- 4.5. Development which would otherwise be “permitted” under the GPDO, may not be in circumstances where:
  - a) the LPA has put in place an Article 4 Direction, thus withdrawing permitted development rights; or
  - b) the LPA has previously given conditional planning permission and taken the opportunity to withdraw permitted development rights through a condition.
- 4.6. There are also circumstances where the permitted development rights may only be exercised after a period of prior notification by the statutory undertaker. In practice, the use of permitted development rights may give rise to serious disagreement between neighbours and practitioners alike.

- 4.7. It can be difficult to disentangle the 'rights' of the developer exercising their permitted development rights. The case at Wapping Pier has involved the consideration of both the nature of the parties involved but also the timing of the particular works.
- 4.8. Additionally, the meaning of 'development' (as shown in paragraph 4.2 above) as well as including the "*carrying out of building, engineering, mining or other operations in, on, over or under land*" also separately provides that the "*making of any material change in the use of any building or other land*" can itself constitute development under the definition in section 55 of the 1990 Act.
- 4.9. In addition, those wishing to undertake certain types of development are required to submit a planning application with an accompanying environmental statement, evaluating the likely environmental impacts of the development, together with an assessment of how the severity of the impacts could be reduced. These assessments – an Environmental Impact Assessment ("**EIA**") - arise from the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (the "**1999 Regulations**").
- 4.10. The provisions of the GPDO in relation to permitted development are amended in certain circumstances where the permitted development is also covered by the scope of the 1999 Regulations relating to EIAs. Paragraph 63 of Circular 02/99 sets out that:

*The provisions of the GPDO (insofar as they relate to Schedule 1 or Schedule 2 development) are amended (regulation 35(3)) as follows:*

- a) *Schedule 1 development is not permitted development. Such developments always require the submission of a planning application and an Environmental Statement.*
- b) *Schedule 2 development does not constitute permitted development unless the local planning authority has adopted a screening opinion to the effect that EIA is not required. Where the authority's opinion is that EIA is required, permitted development rights are withdrawn and a planning application must be submitted and accompanied by an Environmental Statement.*

[These requirements do not apply to certain types of permitted development, which are set out in paragraphs 151-156 of the Circular. However, none of these exclusions are relevant to the case under investigation at Wapping Pier.]

- 4.11. The Circular sets out that the 1999 Regulations will not apply to the completion of development begun before 14 March 1999. In addition, development carried out under permitted development rights and consisting of building operations or engineering operations is excluded from the provisions of the 1999 Regulations where such development



was already underway under permitted development rights at the time of the 1999 Regulations coming into force.

- 4.12. This report now turns to the specific provisions of the GPDO and the 1999 Regulations, in relation to the issues to be considered in respect of the development undertaken at Wapping Pier.

### **Town & Country (General Permitted Development) Order 1995**

- 4.13. Schedule 2, Part 17 of the GPDO deals with development by Statutory Undertakers. Class B of Part 17 deals specifically with the form of development carried out at Wapping Pier:

*“Class B Dock, pier, harbour, water transport, canal or inland navigation undertakings*

#### *Permitted development*

*B. Development on operational land by statutory undertakers or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required —*

- (a) for the purposes of shipping, or*
- (b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.*

#### *Development not permitted*

*B.1 Development is not permitted by Class B if it consists of or includes —*

- (a) the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic,*
- (b) the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of —*
  - (i) an educational building, or*
  - (ii) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation.*

#### *Interpretation of Class B*

*B.2 For the purposes of Class B, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected, and the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964 (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc. of harbours), and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945.”*

4.14. To consider the applicability of permitted development rights it is necessary to analyse the terms set out in the GPDO and derive the tests that need to be applied to the evidence. Subsequently, these tests can be applied to assess whether ‘permitted development rights’ apply to specific parts of the Wapping Pier complex.

4.15. Those tests are that:

- 1) the development must be undertaken by a statutory undertaker or, in the case of Schedule 2, Part 17, Class B to of the GPDO, their lessee; and,
- 2) the development must be on operational land; and,
- 3) the development must be required for either (a) the purposes of shipping, or (b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking; and,
- 4) the development must not be excluded by Schedule 2, Part 17, Class B, paragraph B1 of the GPDO.

4.16. Essentially, for the developer to rely on the GPDO to carry out the development, they must comply with each of the preceding tests. A failure to pass any one test will require that the said works cannot be considered to be permitted development within Schedule 2, Part 17, Class B of the GPDO. Each test will now be examined for its applicability to the development at Wapping Pier

Tests 1 & 2: The question of statutory undertaker & operational land

4.17. The PLA is without doubt a statutory undertaker, as defined in Section 262 (1) of the 1990 Act, which states that:

*“Subject to the following provisions of this section, in this Act “statutory undertakers” means persons authorised by any enactment, to carry on*

*any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power and a relevant airport operator (within the meaning of Part V of the Airports Act 1986”.*

- 4.18. Upon request from the Council’s legal advisors, Trowers and Hamlins, the PLA has produced a copy of the licence and its subsequent amendments that covers the relationship between the PLA and WRC. This now removes the earlier doubts that have existed and clarifies the relationship on this crucial point. It is now possible to establish beyond doubt that WRC do not benefit from permitted development rights, as they are not and have never been a lessee of the PLA at Wapping Pier. That is to say, that although WRC could not themselves undertake an act of permitted development pursuant to Schedule 2, Part 17, Class B of the GPDO; WRC can however make use of a structure which has been placed by the PLA or a PLA lessee using those permitted development rights and that party (ie PLA or their lessee) have “instigated” the use, provided that the subsequent use by WRC does not fall outside the purposes for which development was originally permitted.
- 4.19. Wapping Pier is “on” operational land for the purposes of the test for the applicability of permitted development rights provided the development is carried out by the PLA. The plan on page 4 of this Report is considered to be the crucial instrument to clarify this measure. The PLA owns all of the riverbed and the foreshore to the Mean High Water Mark in the vicinity of the Pier (Port of London Act 1968), with the exception of those areas coloured green on the plan, prepared by the PLA in 1954 and indicating that the part of the land coloured green on the plan is owned by the Bridewell Hospital (which the PLA has indicated is now a trust which owns The King Edward's School, Witley, Surrey). It is evident from this plan that Tunnel Pier is a significant distance outside the “green land” owned by the Bridewell Hospital and that by extension, given the current alignment of Tower Pier and the Downstream Collar Barge in relation to Tunnel Pier, that they would also be without any doubt well outside the green land too.
- 4.20. An argument has been raised by objectors that the extent of the ownership residing with the Bridewell Hospital includes the “land” at Wapping Pier. Firstly, the said section of legislation that implies there is any issue of doubt – section 100 of the Port of London (Consolidation) Act 1920 – has been repealed. Secondly, the phrase in question is “in front of or immediately adjacent to”. Clearly, one must consider the words and their effect in determining the extent to which the exclusion has any bearing on the issue of the PLA’s ownership of land at Wapping Pier.
- 4.21. The meaning of “in front of” and “adjacent to” means a portion of area close to the said point of land. It is a matter of interpretation based on judgement and common sense as to the application of “in front of”, that could in the extreme apply to land on the opposite bank of the river

which is in front of in the literal sense. So, it is a matter of judgement, as to how far does “in front of” apply. In terms of the assessment of the term “adjacent to”, it is considered the same arguments apply.

- 4.22. As imprecise as these terms may be, it would not be reasonable to ascribe the meaning that the land over which Wapping Pier sits, given its distance from the riverbank, could be reasonably construed to be “in front of” and “adjacent to” that riverbank. Moreover, the exclusion is now defunct given the repeal of this section of the legislation. Therefore, there is no issue with the status of the land on which the Pier lies being under the operational control of the PLA and therefore their right to carry out permitted development under the terms of the GPDO.
- 4.23. The conclusion therefore is that the PLA are a statutory undertaker and the land in question is operational land. Part 17 of the GPDO is therefore available for the PLA (or their lessees) to use to undertake development(s) required for the permitted purposes or activities described in Class B of Part 17.

#### Test 3: The nature of the use

- 4.24. The question of whether the development or each act of development (ie the placement/construction of each element of the Pier) was required for the purposes of shipping or in connection with the various activities specified in Schedule 2, Part 17, Class B sub-paragraph (b) of the GPDO will be examined later in this Report.

#### Test 4: Paragraph B1 exclusions

- 4.25. None of the criteria set out in paragraph B1 are applicable to the development, therefore it is not excluded by Schedule 2, Part 17, Class B, paragraph B1 of the GPDO.

#### **Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (the “1999 Regulations”)**

- 4.26. The 1999 Regulations are interpreted in the context of the European Council Directive 85/337/EEC, which came into force in England in 1988, as amended by the subsequent Directive 97/11/EC, which came into force on 14 March 1999.
- 4.27. Projects of the types listed in Annex I to the Directive must always be subject to EIA. Projects of the types listed in Annex II must be subject to EIA whenever they are likely to have significant effects on the environment. A determination of whether or not EIA is required must be made by the LPA for all projects of a type listed in Annex II.
- 4.28. The 1999 Regulations carry over the provisions of the European Directive into English law, as amended, into Schedule 1 and Schedule 2. So that, development that falls within a relevant description in

Schedule 1 to the Regulations always requires an EIA. For all Schedule 2 development (including that which would otherwise benefit from permitted development rights), the local planning authority must make its own formal determination of whether or not an EIA is required (referred to in the Regulations and the Circular as a 'screening opinion'). This may be done before any planning application has been submitted (regulation 5) or after (regulation 7). In making this determination the local planning authority must take into account the relevant 'selection criteria' in Schedule 3 to the Regulations (Annex B to Circular 02/99). The LPA must make all screening opinions and directions available for public inspection (regulation 20).

### **PPG18 – Enforcing Planning Control**

- 4.29. This investigation has sought to identify whether the works at and use of Wapping Pier are lawful in planning terms and therefore whether it would be expedient to take enforcement action arising from the development of Wapping Pier. Central Government Guidance to LPAs on this issue is set out in PPG18.
- 4.30. PPG18 arose out of the Report by Robert Carnwath QC entitled "Enforcing Planning Control". His recommendations were the basis for the Planning & Compensation Act 1991.
- 4.31. During the passage of the Bill through Parliament amendments were proposed to impose a general duty upon LPAs to ensure compliance with planning controls. These amendments were not accepted because the Government considered that enforcement action should remain within the LPA's discretion. The Government's view appears to be that the integrity of the development control process depends on the LPA's ability to take effective enforcement action when it is expedient and proportionate to do so.
- 4.32. PPG18 sets out that LPAs have a general discretion to take enforcement action when they regard it as expedient. Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be expedient and proportionate, in the public interest.
- 4.33. The Guidance goes on to set out that in considering any enforcement action, the decisive issue for the LPA should be whether the breach of planning control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.
- 4.34. Furthermore, any enforcement action should always be commensurate with the breach of planning control to which it relates.
- 4.35. Finally, it is relevant to note that the Town & Country Planning Act 1990 (as amended) sets out the specific time limits for the breach of planning control to become immune from enforcement action. These are 4 years in the case of unauthorised structures and 10 years in the case of unauthorised uses.

## 5. THE EVIDENCE BASE

- 5.1. The initial line of enquiry in the investigation was to ascertain the specific information needed to identify the parties involved in the carrying out of the works at Wapping Pier. This was seen as critical to determining the issue of who had done the works and therefore to being able to clarify whether those persons had the right to carry out the works, if planning permission had not been granted expressly, using their permitted development rights.
- 5.2. Information pertaining to the chronology of events leading to the formation of the installations now at Wapping Pier was gained from interviews with the PLA. This was supplemented by further research of archives by the Council's in-house team and by Trowers & Hamlins (the Council's legal advisers).
- 5.3. Statutory Declarations were also obtained by the Council.
- 5.4. The results of this analysis were set out in a written submission that was then sent to both WRC and the PLA, who were each requested to respond to the position as set out in the letters dated 16 February 2006 and 23 February 2006 respectively.
- 5.5. Whilst these lines of enquiry greatly assisted in certain respects, it appeared to the investigation team that the issues were somewhat more involved and turned on greater detail. The initial conclusions and even the subsequent interim conclusions raised further queries. Following further discussion with Counsel it was deemed necessary to seek further information as to the nature and intensity of the use carried out at Wapping Pier to define whether there has been a material change in circumstances at Wapping Pier such as to amount to a material change in the use of the Pier for the purposes of the 1990 Act.
- 5.6. In order to gather evidence for assessing whether there has been any material change in the use of Wapping Pier, a questionnaire was circulated to various local interests, the PLA and WRC.
- 5.7. This questionnaire sought information on the following, as a guide to the factors that may determine whether there had been any material change of use at Wapping Pier. The information sought was based on the particulars pertaining in 1995, 2000 and 2005, as the earliest date is prior to 10 years ago and the intervening dates may furnish information on the timing of any change in circumstances:
  - 1) average number of vessels moored at the Pier;
  - 2) approximate number of staff working at the Pier;
  - 3) average number of daily deliveries;
  - 4) nature of any works on the vessels;

- 5) approximate time of operations at the Pier;
- 6) approximate number of vehicle visits;
- 7) approximate number of pedestrian visits;
- 8) approximate number of meals;
- 9) approximate amount of rubbish disposed of per day;
- 10) use of mess facilities.

## **Findings**

### Regarding evidence of the provenance of Tunnel Pier

- 5.8. Based on the advice of the PLA, it is understood that Tunnel Pier was originally constructed prior to 1850. This advice is supported by an engraving published in the Illustrated London News showing Queen Victoria and the Coburg family landing at Wapping/Tunnel Pier circa 1850, which is held in the London Maritime Museum. No case has been made by others that this matter is in question. Therefore, and essentially, it is accepted that Tunnel Pier pre-dates the advent of planning regulations in 1948.
- 5.9. The PLA's records also contain a 1937 photographic survey, reproduced in London's Lost Riverscape, showing Wapping/Tunnel Pier comprised two offices – one clearly marked for the use of the Port of London Authority – the other marked for use by WHJ Alexander Ltd. WHJ Alexander are understood to have been a tug company operating on the River Thames.
- 5.10. That part of the Pier occupied by WHJ Alexander Ltd is understood to have been used as an operational base. It is considered likely, based on information received from the PLA, to have been used for the following purposes -
  - a) for employees when “clocking-in” to work;
  - b) as accommodation for employees; and,
  - c) as offices to assist in the administration of the works undertaken at the Pier.
- 5.11. In June 1979, the PLA issued a works licence to WRC for Wapping Pier (i.e. the Tunnel Pier pontoon, two dolphins, fixed and tidal brows and support dolphin.) The original licence was updated over the years. A copy of the original licence and the amendments was obtained by the Council from the PLA.
- 5.12. WRC has used Wapping Pier (Tunnel Pier) since 1971. This has been evidenced by a Statutory Declaration by Alan Woods on behalf of

WRC. Having undertaken a due and proper search, the PLA has indicated that there is nothing in their records that would indicate anything contrary to this. No evidence has been forwarded by others to suggest any other position in respect of the commencement of use at Wapping Pier by WRC.

- 5.13. The PLA has confirmed that, having undertaken due and proper enquiries, it has no records of any notices having been served by the PLA on WRC requiring alteration to Wapping Pier (Tunnel Pier). The PLA also has no records of WRC having undertaken any external works to Wapping Pier (Tunnel Pier). It appears, on the evidence, that since the commencement of their use of Tunnel Pier, WRC have only carried out routine maintenance and painting. The Council has not seen any evidence which would contradict this.

Regarding evidence of a change of use of Wapping Pier

- 5.14. The use of Tunnel Pier at that time (ie since 1971) is said by Alan Woods, in his Statutory Declaration of 3 October 2005, to be as “an operational base”. This contrasts with the terms of the licence granted to WRC by the PLA and with the statement of the PLA in their letter dated 11 August 2004, which refers to an application to “regularise” the position at Wapping Pier and also an indication that WRC are in breach of their works licence. In this letter there are two different terms to describe the use of Wapping Pier by WRC and the letter indicates that its intention is to regularise the position at Wapping Pier (so that it would be clear its use was as an “operational base”). This could indicate that there has been change of use since 1971.
- 5.15. An earlier letter from the PLA dated 8 June 2005, indicates that it is sensible to conclude that there has been change from a mere mooring facility at Wapping Pier to use by WRC of Wapping Pier as an operational base. The letter states that the earlier opinion from the Council’s Counsel (on 3 May 2005) “appears eminently reasonable” and the PLA does not disagree with the position.
- 5.16. Moreover, the Statutory Declaration of Thomas Woods sets out 2 points: firstly that WRC uses the pier known as Wapping Pier as its operational base and secondly WRC has used the Pier since first occupying the said Pier pontoon since 1971. This declaration does not state that WRC started to use Wapping Pier as their operational base in 1971. [NB: It could not have stated this in any event; as Thomas Woods was not born in 1971; hence the words "I understand that" in his declaration.]
- 5.17. Insofar as that Statutory Declaration by Alan Woods sets out any evidence that the use as an operational base commenced in 1971, it must be contrasted with the other statements by the PLA, other evidence received and the Statutory Declaration by Thomas Woods. It is also important to note that no detail is given as to the nature of the activities taking place over the relevant period of time, or what he



means when he describes its use as an “operational base”. For those reasons, it would be reasonable for the Council to treat with some caution the statement in the Statutory Declaration by Alan Woods in respect of the use as an operational base commencing in 1971, bearing in mind the other evidence received.

- 5.18. In planning law a change of use has to be material to need planning permission. This will be considered later in this report.

Regarding evidence of the provenance of Tower Pier

- 5.19. The PLA have advised that Tower Pier was originally located in the Pool of London upstream of Tower Bridge adjacent to Lower Thames Street. Evidence of the siting of the Pier can be found in a photograph, from the MacFee collection, “Tower Bridge seen from the north (City) bank of the Thames, with the old Tower Pier (opened in 1929) to the right of the picture”, held in the archives of the London Maritime Museum. Tower Pier is also shown in its original location in a survey photograph reproduced in “London’s Lost Riverscape”.
- 5.20. The PLA have also advised that Tower Pier, in its original location, was used by the PLA as a pier for the mooring of, and loading and unloading of vessels, and the passing of pedestrians from the foreshore to vessels using the Pier. The paragraph above the photograph in London’s Lost Riverscape indicates that the Pier was also used as headquarters for the PLA’s Harbour Master of the Upper Reaches i.e. an administrative function. PLA records indicate that the Pier, in its original location, included a kitchen, mess facilities and ancillary storage stage.
- 5.21. The PLA have advised that in preparation for the Millennium celebrations, Tower Pier was floated down river from its original berth to be fixed to the eastern (downstream) end of Tunnel Pier in July 2000 under the direction of the PLA through its Marine Services officer, Captain Geoff Buckby. The PLA state that such work was undertaken for the purposes of shipping pursuant to the powers of the PLA under the Port of London Act 1968 and substantially completed on 5 July 2000. A statutory declaration by Captain Geoff Buckby to that effect has been submitted to the Council.
- 5.22. The PLA have also advised that following the completion of the above work by the PLA, the PLA granted a licence for the replacement of the collar barge at the downstream end of Wapping Pier (Tunnel Pier) by the ex Tower Pier pontoon and two ground moorings, as approved by the PLA and pursuant to the plan no. 125.0535 from the PLA to WRC issued on 27 November 2000, being an amendment to the existing licence between the PLA and WRC dated 26 June 1979.
- 5.23. It is understood, based upon the evidence and on discussions with the PLA, that the use of Tower Pier by WRC commenced following its installation in July 2000 and that such use was subject to the existing

licence between PLA and WRC dated 26 June 1979. It is also understood that WRC has not undertaken any development in terms of "...the carrying out of building, engineering, mining or other operations in, on, over or under land..." (as defined in the 1990 Act (as amended)) to the Pier since the date of its placement in its current location. It appears, on the evidence that since the commencement of their use of Tower Pier in its current location WRC have only carried out routine maintenance and painting. The Council has not seen any evidence which would contradict this.

Regarding evidence of the provenance of The Dolphin (two Steel Piles)

- 5.24. The Dolphin comprises two steel piles that derive from the Planning Permission granted by LBTH by notice ref: PA/00/0085, dated 30 March 2000, for the replacement of existing timber pontoon guides with two new steel piles to secure the pontoon. This decision notice is a public document on the Statutory Register of the LPA.

Regarding evidence of the provenance of The Downstream Collar Barge

- 5.25. PLA records indicate that the "Downstream" Collar Barge was previously used as a storage barge. The PLA has indicated that such barges are often used to transport municipal waste up and down the Thames. Also known as a dumb-barge, as it has no power to manoeuvre by itself. It was formerly used by Cleanaway Limited, who moved rubbish up and down the river in it, until acquired by the PLA, who subsequently sold it to WRC.
- 5.26. The PLA have advised that on 7 August 2003 it undertook works comprising the laying of moorings and installation of a Collar Barge to be linked with the downstream end of the Tower Pier pontoon at Wapping Pier.
- 5.27. The PLA have also advised that these works were deemed subject to the licence between the PLA and WRC dated 26 June 1979. The Council has been advised that the use of the Collar Barge by WRC pursuant to the licence commenced following its installation on 7 August 2003 and is not aware of any evidence to the contrary.
- 5.28. The PLA have advised that for a short period of some three weeks, in early 2006, the Collar Barge was re-sited alongside Tower Pier on its rivershore side, whilst WRC undertook some internal works to the barge and upon completion of those works they returned the Collar Barge to its position on the downstream end of Tower Pier.

Regarding evidence of the provenance of The Berthing Dolphin

- 5.29. PLA records indicate that in July 1997 WRC placed a new three pile berthing dolphin upstream of Wapping Pier (Tunnel Pier end), which is thought to be required to accommodate the mooring of the WRC vessel

mv Silver Sturgeon. The PLA issued a supplementary licence in relation to these works. No application for planning permission was made to the Council.

#### Regarding evidence of Land Ownership

- 5.30. The PLA owns all of the riverbed and the foreshore to the Mean High Water mark in the vicinity of Wapping Pier (comprising Tunnel Pier, Tower Pier, the Downstream Collar Barge and the Berthing Dolphin), with the exception of those areas coloured green on the plan prepared by the PLA in 1954 entitled “Bridewell Hospital – Reserved Foreshore”. PLA records indicate that that part of the plan coloured green is owned by the Bridewell Hospital, which is now a trust and owns The King Edward’s School, Witley, Surrey. The limited extent of the land not in the ownership of the PLA is very clear.

#### Regarding the relevant planning unit

- 5.31. The first step in assessing whether there has been a material change of use is to establish the relevant planning unit, having regard to the approach described in Burdle v. Secretary of State for the Environment [1972] 3 All ER 240 at p. 244 per Bridge J. In this case, it is not considered to be an entirely straightforward exercise.
- 5.32. Looking at the existing position, the relevant planning unit is most likely to be held to be the Pier as a whole. The various parts of the Pier are in common occupation, used for a single identifiable purpose, and are neither physically or functionally separable.
- 5.33. The Pier was, however, noticeably smaller in 1996. Since that time, the following parts of the Pier have been added: the three pile upstream berthing dolphin, the Tower Pier pontoon and the downstream collar barge. The addition of those elements resulted in an expansion of the planning unit. For reasons explained below, this expansion of the planning unit is relevant to the issue of material change of use.
- 5.34. In the case of Fidler v. First Secretary of State [2004] EWCA Civ 1295, the Court of Appeal held that in determining whether there had been a material change of use, a relevant consideration would be whether the extension of an existing use onto other land had resulted in the creation of a new planning unit. In his judgment, Carnwarth LJ expressly endorsed the reasoning of Richards J at first instance, who had reached the same conclusion.
- 5.35. In his judgment, Richards J had accepted as correct the following submissions made by counsel for the First Secretary of State:

*“70. As to the planning unit, there is no issue over the inspector’s conclusions concerning the existing planning units at the site ... and it is common ground in particular that Notice 1 was properly directed to the area of land identified as planning unit C. The inspector’s use of*

*that planning unit as a tool for assessing the materiality of any changes during the ten year period is orthodox and correct: the question is whether the mixed use of that planning unit at the date of the notice involves a material change from uses previously carried on during the ten year period. The fact that there were different planning units at the beginning of the period does not necessarily mean that there has been a material change of use, though it tends to suggest it. In any event the changes leading to the creation and extent of the present planning unit are matters properly taken into account*” (emphasis added).

5.36. At paragraph 76 of his judgment, Richards J found as follows:

*“76. The inspector was right to consider the planning unit and the use as they existed at the date of the enforcement notice, and to consider whether that use was materially the same as at the beginning of the relevant period or whether there had been a material change of use. ... He did not treat the change in the planning unit as necessarily giving rise to a material change of use, but looked at the change in the planning unit, and the related question of how the site was being used, as part of his overall consideration of whether there had been a material change of use. This was a lawful approach”* (emphasis added).

5.37. Before turning to examine the facts of this case, there is one other aspect of the decision in Fidler that should be noted. In the Court of Appeal, Carnwarth LJ made some observations about the applicability of the approach enunciated by Donaldson LJ in Kensington and Chelsea RBC v. Secretary of State and Mia Carla Ltd. [1981] JPL 50. Those instructing me will recall that in the course of his judgment in that case, Donaldson LJ criticised the use of the term “intensification” in the context of material change of use, and added:

*“If the planners were incapable of formulating what was the use after intensification and what was the use before intensification then there had been no material change of use”.*

5.38. Whilst Carnwarth LJ did not question the correctness of that decision on its facts and in the then legal context, he suggested “*considerable caution before applying statements from pre-1991 cases to the new statutory regime*” because one of its purposes was to give a clear signal to the courts and others that the more legalistic features of current case-law and practice can be abandoned.

5.39. In this case, it would appear that the physical expansion of the Pier from 1997, and the resulting expansion of the planning unit, has facilitated intensification of its use. In particular, the addition of the Tower Pier pontoon in 2000, with its offices and kitchen facilities, seems to have enabled WRC to change the scale and nature of its use at the Pier.

5.40. The task of assessing whether a change of use has taken place in these circumstances is not an exact science, and involves the exercise

of judgment on the facts as they are known. On the facts, it is considered that there has been an intensification of WRC's use, combined with and facilitated by a significant expansion of the relevant planning unit, and this has been such as to change the overall character of the use from mooring of vessels and ancillary activities to use as an operational base. As a matter of fact and degree, it is considered that this has amounted to a material change of use. The following section sets out the factors that have led to this conclusion.

#### Regarding evidence of any Material Change of Use

- 5.41. It appears, on the information received from the Sayers and from WRC in response to the written submission made by the Council as mentioned in paragraph 5.4 of this report that the number of employees working at the Pier increased between 1995 and 2005. The Sayers and WRC give similar figures for estimates of employees in 2000 (28 versus 35). However, they give very different estimates of the number of employees present at the Pier in 2005 (30 versus 50-80). Whilst WRC ought to be more able to provide such information on their own employees, it has been noted that their response is qualified, in that for each time frame they only refer to numbers of "full-time" staff and add "plus waiters/waitresses". It is most probably these types of staff that would be more likely to increase in number if there are more boats and extended hours of operation.
- 5.42. The information received from the Sayers and from WRC in response to the written submission made by the Council as mentioned in paragraph 5.4 of this report suggests that there was no meal preparation at the Pier in 1995 but since 2000 meals have been prepared in kitchens on board the boats. The addition of Tower Pier in 2000 provided on-pier cooking facilities that were not available prior to that date.
- 5.43. So, whilst, neither figure for 2005 is regarded as conclusive, it is reasonable to conclude that there has been an increase in the number of people employed and that the nature of work they are undertaking has changed i.e. office and administration functions have been added and there has been an expansion of catering activity since 2000 (with the addition of Tower Pier).
- 5.44. The introduction of the Downstream Collar Barge indicates an increase in the generation of waste and a need for more storage space.
- 5.45. WRC suggests that the number of vehicle visits has dropped between 2000 and 2005 from 12 visits-a-day to 4. However, looking at the number of meals being prepared and the general increase in activity on the Pier, it might be reasonable to assume that an increase in vehicles would have taken place. Because of this apparent discrepancy; WRC were asked to explain the drop in vehicle numbers. By way of letter, dated 2 October 2006, WRC explained that prior to 2000 they also supplied their restaurant in Tower Hill – stocked and returned from the

Pier itself – but this ceased trading and so deliveries are no longer required at the Pier in relation to the restaurant. In addition to this; following the US 9/11 incident WRC suffered a heavy fall in trade (from which it has made a steady recovery); and WRC has discontinued its lunchtime cruise and instead concentrates on corporate, evening entertainment events.

- 5.46. Moreover, in terms of the whether any material change of use has occurred, it must also be noted that the PLA has indicated in letters to the Council that it intended to regularise the planning position at Wapping Pier. The original licence (dated 26 June 1979) produced for this investigation does state that the use of the Pier by WRC is for mooring of vessels.
- 5.47. That there are and have been two uses of the Pier, being a change from an initial use as a "mooring facility" to a use over time as an "operational base" for river cruises is suggested by various letters and documents in the Council's possession. The following factors in particular have led to this view:
- a) The facilities put in place from 1997 onwards have enabled more and bigger vessels to be serviced, and have facilitated the introduction of a number of different and additional functions, most notably meal preparation on a substantial scale and what might be described as 'head office' functions.
  - b) The number of employees working at the Pier appears to have increased significantly between 1995 and 2005 as these changes have taken place. In addition, the nature of the work some of those employees have been undertaking has also changed because of the introduction of the different and additional functions referred to above.
  - c) The placement of the downstream collar barge indicates a consequential increase in the need for storage space.
  - d) On 11 August 2004, the PLA wrote to the Council in connection with WRC's use of the Pier. In that letter, the PLA stated:

*"... I would inform you that WRC is currently in breach of a number of its obligations under the extant works licence. It is endeavouring to remedy these breaches within the PLA's stated timescale, and in particular applying to the PLA to vary the use of the works at Wapping Pier as currently defined within the works licence.*

*Should that proposed variation be granted by the PLA, the use of the works within the licence will be defined, instead of currently being limited to the mooring of commercial vessels and workboats, as follows: "not without the written consent of the PLA (which so far as is lawful shall not be unreasonably withheld) to use the works as an operational base in connection with the licensee's passenger*

*boat business”. This definition of use will accord with comparable facilities elsewhere on the tidal Thames, notably those operated by City Cruises at Cherry garden Pier, opposite Wapping Pier in Southwark”*

*(emphasis added).*

In view of the PLA’s familiarity with WRC’s use over the years, and the fact that the PLA evidently considered that there had been a change of use such as to require a change in the relevant clauses of WRC’s licence, it reasonable to attach some weight to this expression of opinion.

- 5.48. In the initial instructions provided to Counsel in 2005, the instructing solicitor said that:

*“Although the Pier has previously been used for mooring river barges, for many years its primary activity was for the mooring of vessels used for sightseeing on the river. The Pier has been extended in recent years with the agreement and cooperation of the Port of London Authority (“PLA”) to accommodate the enlarged fleet of vessels operated by Woods River Cruises ... Activities at the Pier have increased during recent years turning it from a mooring facility to an operational base for WRC. The original PLA licence related to the mooring function, but the PLA has been aware of and accepted the changing function.”*

- 5.49. Counsel addressed this matter at paragraph 40 of the Opinion as follows:

*“Similarly, the change in the use of the Pier described in my instructions – from the mooring of vessels used for sightseeing on the river to use as an operational base by WRC – would in my view be likely to constitute a material change of use [footnote: having regard to the different character of the use, and its land use implications – in particular to the impact that the more intensive use appears to be having on the amenities of local residents]”.*

- 5.50. A copy of the Opinion was provided by the Council to the PLA, and in a letter dated 8 June 2005 the PLA expressed the view that the Opinion “appears eminently reasonable”. No issue was taken with the passage quoted above, or indeed any other part of the analysis contained in that document.

- 5.51. A letter from the PLA, dated 8 June 2005, again indicates that it is sensible to conclude that there has been change from a mere mooring facility at Wapping Pier to the use by Woods River Cruises of Wapping Pier as an operational base. The letter states (in paragraph 2) that the earlier opinion received from Counsel “appears eminently reasonable” and does not disagree with the position.

- 5.52. A letter from the Council to the Ombudsman, dated 14 September 2005, indicates that in the view of its author there has been a change of use of the Pier from the mooring of vessels to an operational use.

*The relevant statement appears in paragraph 2 of the letter, which states that "Activities at the Pier have increased during recent years, turning it from a mooring facility to an operational base for WRC, but the PLA had been aware of and have accepted the changing function..."*

- 5.53. Those opinions need to be compared/contrasted with the statutory declaration by Alan Woods which refers to the use of Wapping Pier as an operational base since 1971. The relevant paragraph is paragraph 2 which states that – "Woods River Cruises Limited uses the pier known as Wapping (formerly Tunnel) Pier pontoon, which is positioned as indicated and coloured red on the plan at Annex A hereto, as its operational base, and, to the best of my knowledge and belief, It is understood that Woods River Cruises Limited has used the pier known as Wapping (formerly Tunnel) Pier pontoon since first occupying the said pier pontoon in 1971;"

- 5.54. This view of the facts is different from those expressed in the other documents mentioned above. As mentioned above, it is also not particularised in any way.

- a) As regards evidence received from the complainants, Mr and Mrs Sayers, dated 6 April 2006:

- the pictures etc in Mr and Mrs Sayers' evidence of use indicates that in 1995 the Wapping Pier consisted of only Tunnel Pier and this contained two offices and had two full-time office staff working at it; and
- in 2000 the Tower Pier was floated downstream of Tunnel Pier and this added a kitchen, a mess facility, and a head office function to Wapping Pier; and
- when the head office function was moved to Wapping Pier this appeared to allow for a change in the function from mooring to an operational base because the head office function, as such, appears to have moved to the site of the Pier itself; and
- as well as the head office function, WRC, on the evidence, seem to have now commenced preparing meals on the Pier itself.

- 5.55. The Council needs to weigh the relevant evidence and arrive at its own view on the balance of probabilities.

- 5.56. From the evidence received it is reasonable to conclude that there has been a change from the function of mooring vessels at a pier which had



merely two staff undertaking a number of office functions; to a change in use to contain a head office function, kitchen facilities and a bigger overall operation. As a matter of judgment, it is considered that the intensification of use which has occurred has been such as to alter the character of the use and its land use impact sufficiently to amount to a material change of use.

- 5.57. In the light of the relevant legal authorities, it is apparent that if one can apply a different label before and after to the function of a particular planning unit then this is consistent with a change in the character of the use of that planning unit. It may not be necessary to be able to apply a different label, but if it can be done that is indicative that there has been a material change of use. For the reasons set out above, it is considered that in this case it is possible to apply a different label before and after the intensification of use, namely from use as a mooring facility to use as an operational base. Therefore there has been an intensification of use amounting to a change in character at the planning unit consisting of Wapping Pier. The event which appears to have caused this was the placement of Tower Pier (which happened in 2000) which facilitated the moving of the head office function to the Pier and facilitated a greater level of catering activity and therefore enabled the change to an operational base as opposed to mere mooring.

## 6. ANALYSIS OF THE EVIDENCE

- 6.1. The issues arising from the complaints set out in paragraph 3.2 above are:
- 1) the case of the lawfulness of the works of installation concerning the various elements at Wapping Pier - the first issue
  - 2) whether there has been, for the purposes of section 55 of the 1990 Act "*...the making of any material change of use in the use of any buildings or other land*" – the so called "material change of use" at Wapping Pier – the second issue
  - 3) whether the works and/or any material change of use of Wapping Pier should have been subject to an EIA – the third issue

### **The First Issue – are the Wapping Pier structures lawful?**

- 6.2. This issue turns on whether there has been development in terms of Section 55 of the 1990 Act and whether there is any formal planning permission for the carrying out of the works comprising the separate elements of Wapping Pier, as set out in Section 2 above. It is appropriate to consider each element of Wapping Pier separately, as each represents an individual operational act of development, but first the applicability of the permitted development rights contained in the GPDO in relation to the installation of the various elements of Wapping Pier need to be examined.
- 6.3. The permission in Schedule 2, Part 17, Class B of the GPDO is for "*...dock, pier, harbour, water transport, canal or inland navigation undertakings...*" by a statutory undertaker on operational land. There is no question from the evidence that as a structure, the constituent elements of Wapping Pier are anything other than a pier and that Pier is owned and controlled by the PLA, who is the relevant statutory undertaker and that the land is operational land as indicated in earlier paragraphs above in this Report.
- 6.4. The question is whether the Pier has been provided by the PLA (or its lessees) as an act of development required:
- 1) for the purposes of shipping; or
  - 2) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.
- 6.5. The term shipping is not defined in planning legislation. It is a very broad term and from the evidence there seems to be no doubt that the Pier is required for the purposes of shipping and/or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods. The fact other activities may take place

does not detract from that conclusion, as those other activities would be ancillary in planning terms to a use for the purposes of shipping.

- 6.6. No issues raised by the restriction in Schedule 2, Part 17, Class B, paragraph B1 of the GPDO are applicable in relation to the installations at Wapping Pier.
- 6.7. WRC are not a statutory undertaker, nor are they a lessee of a statutory undertaker and therefore they do not benefit from the rights in Schedule 2, Part 17, Class B of the GPDO to carry out any of the operational development forming Wapping Pier.

**Conclusion:**

- (1) Works and operations (constituting development) carried out by the PLA (a statutory undertaker) on land at Wapping Pier (operational land) required for the permitted purposes set out in Schedule 2, Part 17, Class B of the GPDO would be 'permitted development'.**
- (2) Works and operations (constituting development) carried out by WRC (a licence holder) cannot benefit from 'permitted development' rights under Schedule 2, Part 17, Class B of the GPDO.**

- 6.8. I will now consider each element of Wapping Pier separately, as each represents an individual operational act of development.

(a) Tunnel Pier

- 6.9. It is beyond reasonable doubt that Tunnel Pier, the original element of what is now known as Wapping Pier, was built in the 1800s. The evidence suggests that this element was built by the pre-cursor of the PLA, the Thames Conservators.
- 6.10. Comparison of a 1937 photographic survey with the current structure demonstrates that Tunnel Pier has remained essentially the same since 1937.

**Conclusions:**

- (3) The position and structure of Tunnel Pier pre-dates the advent of planning controls in 1948 and, as such, is therefore lawful.**
- (4) There have been no works constituting development (for the purposes of section 55 of the 1990 Act) on Tunnel Pier since 1948 of which the Council, having undertaken due enquiries, is aware. Therefore, it is reasonable to conclude that there is no breach of planning controls regarding its current form at this site.**

(b) Tower Pier

- 6.11. As described at 5.19 above, Tower Pier was formerly stationed in the Pool of London upstream of Tower Bridge. The original pier structure was refurbished and moved downstream to Wapping.
- 6.12. Tower Pier was moved by the PLA and moored at Wapping with the operation completed on 5 July 2000. A statutory declaration to this effect has been provided to the Council's investigation team.
- 6.13. As originally constructed, Tower Pier comprised two cabins mounted on a hull. The evidence suggests that there have been no material works to alter the appearance, size or shape of the superstructure since its placement downstream of Tunnel Pier by the PLA on 5 July 2000.

**Conclusions:**

- (5) *The current position of Tower Pier commenced in July 2000. The development (ie the mooring of Tower Pier downstream of Tunnel Pier) was carried out by the PLA. The PLA, as a statutory undertaker, had the benefit of permitted development rights pursuant to the GPDO to position the works on their operational land.***
- (6) *There have been no works constituting development (for the purposes of section 55 of the 1990 Act) on Tower Pier since it was moved to its current position in 2000 of which the Council, having undertaken due enquiries, is aware. Therefore, it is reasonable to conclude that there is no breach of planning controls regarding its current form at this site.***

(c) New Steel Piles

- 6.14. The Steel Piles benefit from express planning approval and so these works are lawful.

**Conclusion:**

- (7) *The steel piles are authorised with the benefit of full planning approval.***

(d) Downstream Collar Barge

- 6.15. This element of Wapping Pier was installed by the PLA in 2003. A statutory declaration to this effect has been provided to the Council's investigation team.

**Conclusion:**

**(8) The mooring of the downstream collar barge downstream of Tower Pier was undertaken in August 2003. The development was carried out by the PLA. The PLA, as a statutory undertaker, had the benefit of permitted development rights pursuant to the GPDO to position the works on their operational land.**

**(e) Berthing Dolphin**

6.16. The installation of the Berthing Dolphin was undertaken by WRC in July 1997. There can be no doubt now that these works cannot be deemed to benefit from any permitted development rights. No record has been found of formal planning permission for these works.

**Conclusion:**

**(9) The instalment of the berthing dolphin by WRC in 1997 was unauthorised. However, the power to take any enforcement action lapsed in 2001, 4 years after it was installed, in accordance with section 171B of the 1990 Act.**

**The Second Issue – has there been a material change of use?**

- 6.17. The starting point for examining whether there has been a material change of use is to establish the relevant planning unit.
- 6.18. The extension of Tunnel Pier by the addition of Tower Pier and the subsequent addition of the Downstream Collar Barge raises the issue of the “planning unit”. It is considered that there is a particularly strong case for considering the whole complex as a single planning unit, as each part is in the same ownership and the specific relationship of each part only makes sense when seen as part of a complex in use by a single body.
- 6.19. In 1997 the planning unit was extended by the addition of the upstream Berthing Dolphin. In 2000 the planning unit was further extended by the addition of Tower Pier and again in 2003 when the downstream Collar Barge was added.
- 6.20. The various parts of the Pier are in common occupation, used for a single identifiable purpose, and are neither physically or functionally separable. The Pier has been extended from 1997 to 2003 in three phases and this expansion of the planning unit is relevant to the issue of a material change of use.

**Conclusion:**

**(10) The whole of the structure known as Wapping Pier is the planning unit for the purpose of assessing the whether there has been a material change of use. The planning unit was**

***extended in three phases between 1997 and 2003 by the addition of the upstream Berthing Dolphin in 1997, Tower Pier In 2000 and the downstream Collar Barge in 2003.***

- 6.21. As set out above, WRC do not enjoy 'permitted development rights', in their own right, as it is now clear they are not (and never have been) lessees of the PLA. The issue is whether WRC has undertaken an act of development, and therefore whether it needs planning permission.
- 6.22. It is considered that the intention of the Secretary of State in formulating the terms of the GPDO was to expressly and exclusively define the scope for permitted development. The thrust of the GPDO is to establish the scheme of development that could be carried out by particular parties without necessarily having recourse to the Local Planning Authority. These rights were to be enjoyed by those parties clearly identified by the specific terms of that particular class of development. This means that the permitted development has to be provided and first used by the specified parties (ie PLA or their lessees).
- 6.23. The provisions of Schedule 2, Part 17, Class B of the GPDO do not however equate to a personal planning permission so that the facilities created can only be used at any time thereafter by those parties. Provided that there has been no material change of use, the subsequent use of the relevant planning unit for the same purposes or activities by another party would not constitute development, nor would it infringe any of the clauses in Schedule 2, Part 17, Class B of the GPDO.
- 6.24. Whilst it can be shown that the PLA lawfully implemented the 'operational development' of both Tower Pier and the Downstream Collar Barge, it does not follow that the PLA instituted the use of those parts of the Pier.
- 6.25. Counsel's advice has been sought on this issue, and he has advised that whilst there is considerable uncertainty as to the position in law, on balance his view is that if WRC has instituted a change of use, that is in itself an act of development, which if not authorised (either under the GPDO or by the grant of planning permission) is unlawful. The authorisation given by the GPDO for the carrying out of development for these purposes is limited to the PLA and its lessees.

***Conclusions:***

- (11) The installations of the Tower Pier pontoon and the Downstream Collar Barge were carried out under permitted development rights derived from Schedule 2, Part 17, Class B of the GPDO but the PLA did not itself institute any particular use of the facility thus created. The use of these structures for purposes defined in Schedule 2, Part 17, Class B of the***

***GPDO persists in planning terms as the lawful use and remains to be taken up by the PLA or their lessees.***

***(12) The material change of use instituted by WRC, who are now known without doubt to be licensees, of Tower Pier and the Downstream Collar Barge commenced after 1996 (ie in 2000). Therefore, as there is no express planning approval for the material change of use that has taken place, and it is not considered to be authorised by the GPDO, it is considered to be unlawful. There is no immunity from enforcement action, as the current activities on Tower Pier and the Downstream Collar Barge have not continued for more than 10-years.***

- 6.26. However, the situation at Wapping Pier is somewhat complex, as the original structure – Tunnel Pier – pre-dates the post-war planning legislation system. As set out above, the use of Tunnel Pier for shipping purposes is lawful, as such WRC did not need to seek formal planning permission to commence using it for their operations. As stated above, the Berthing Dolphin is also lawful as a structure and because of that its use would be lawful as well, as the power to take enforcement action in respect of it has lapsed (see para 6.16).
- 6.27. In terms of the rest of the complex, although the structures are lawful, the material change in use of the Pier that they have facilitated, by someone other than the PLA or their lessees, is, on balance, not. As the material change of use took place fewer than 10 years ago, the development is not immune from enforcement action.
- 6.28. It is important now to identify precisely what the new use at Wapping Pier is in order to judge whether it amounts to a material change of use.
- 6.29. In addition to any changes directly facilitated by the increased size of the Pier, there may be other changes that are as a result of a change in the nature of the activities undertaken by WRC since 1996 that are materially different to what they did prior to that date. 1996 having been chosen as the date bearing in mind the 10-year time limit for enforcement in section 171B of the 1990 Act.
- 6.30. Tunnel Pier was likely to have been used by WHJ Alexander Ltd as an operational base (see paragraph 5.10 above). Initial use by WRC would appear to have been more in the nature of a relatively simple mooring use. It must be acknowledged that at the time on the structure were (and still are) two buildings capable of use for ancillary offices, mess and other facilities. These also existed when used by WHJ Alexander Ltd. WRC's use of the Pier developed into its current use which is described as an operational base. Caution must be exercised in interpreting too literally the descriptions given to previous uses of the structure only as a mooring, particularly because of the physical facilities that were present.

- 6.31. It is also arguable that given the above, the initial use by WRC could have amounted to a partial take up of the lawful use as an operational base. Whilst this may have been the case, it is considered that due to the wide gap in time between the two occupations, and the need for caution over the interpretation of descriptions, a comparative analysis of the current use against the use 10 years ago is more appropriate to analyse this matter.
- 6.32. The case must be made on an analysis of whether there has been any material change of use of the “planning unit” as a whole. Clearly the planning unit was at the outset originally only Tunnel Pier. That has been shown to be lawful because it is immune from enforcement action due to the effluxion of time. The addition of the Berthing Dolphin has also been shown to be lawful through the grant of a planning permission by the Council. The addition of Tower Pier and subsequently of the Downstream Collar Barge has expanded the planning unit significantly.
- 6.33. It has been shown above that both Tower Pier and the Downstream Collar Barge were installed by the PLA, who benefit from permitted development rights. Therefore, there was no need for formal planning permission for the PLA to physically enlarge the planning unit.
- 6.34. If the PLA (or their lessees) had occupied the structures, then on that count there would have been no breach of planning control, as the institution of the use under those circumstances would have been permitted under Schedule 2, Part 17, Class B of the GDPO. For the same reason there would have been no case to consider on the count of a material change in the intensity of the use of the planning unit. It must also be remembered that in such circumstances (i.e. use by PLA or their lessees) the scope of the lawful uses would be those specified in the GPDO (i.e. for the purposes of shipping etc) a very wide definition.
- 6.35. Because WRC are a licence holder, a material change of use of the planning unit by WRC has a different legal impact than if it was undertaken by the PLA or their lessees. This could be considered to be somewhat anomalous, as the impact need not have been any different had the PLA or their leaseholder occupied the planning unit for the purposes of shipping. Nevertheless, the GPDO only exempts the statutory undertaker and its lessees – and no other class of persons – from the need to seek and obtain planning permission for such development.
- 6.36. It begs the question of what would be the difference were the PLA to grant a lease to their incumbent licence holder? There would be no need for any formal planning approval.
- 6.37. The evidence as to the change in the intensity and nature of the use is not clear cut; for example, there has been only a modest change in the number of craft attending the Pier complex.



- 6.38. It would be difficult to argue that the intensification of use had led to a material change of use on that ground alone. The growth of a business can result in an increase in activity. That growth would not normally be the subject of planning control. What may make the growth a planning issue is whether there has been a material change in the character of the use.
- 6.39. However, it is in the scale of the operation, as well as in the type of activity associated with the Pier that there has been a change in the material circumstances surrounding the planning unit and therefore this is the point at issue in this investigation.
- 6.40. There is a change in number of meals prepared since 2000. It appears that a considerable number of meals are now prepared in kitchens on board the boats. Indeed, on the evidence received, there were no meals prepared on board the boats in 1995. The addition of Tower Pier in 2000 introduced much greater facilities to prepare food on the Pier. So, on this point there is evidence of there having been a material change of use due to a material and significant change in the character of the activities undertaken within the planning unit.
- 6.41. Although the data is not conclusive, it would seem to be reasonable to expect the increased number of meals prepared, and therefore served, to have led to a proportional increase in waiting staff. The increased scale of the operation would also suggest more administration and management activity that would generally lead to more staff to carry out those duties. The impact on residential amenity of the increased comings and goings, and the different activities associated with the increased number of employees and the tasks they are undertaking, must therefore be taken into account.
- 6.42. The capacity to handle significantly more waste was brought about by the installation of the Downstream Collar Barge. The volume of waste is therefore an additional sign of the intensification of the use at the planning unit that is Wapping Pier.

**Conclusions:**

**(13) The GPDO authorised introduction of Tower Pier and the Downstream Collar Barge, which has facilitated the intensification and expansion of the operation. However this more extensive use by WRC (rather than by the PLA or their lessees) requires planning permission because the GPDO does not authorise development in the form of a material change of use by WRC (a licence holder). The PLA or their lessee did not carry out that act of development so as to bring it within the GPDO, and no other planning permission exists for the change of use.**

**(14) There has been a material change in the character and nature of the activities at the Pier, in respect of additional office**

***facilities and the preparation of meals at the Pier, which was made possible by the addition of Tower Pier in 2000.***

***(15) A commensurate increase in staff generally would indicate a growth in the business, but may also result from a material change of use due to the increase in office and catering activity with apparently increased impacts of residential amenity.***

***(16) The introduction of the Downstream Collar Barge in 2003 to handle the greater quantity of waste produced by the operation signifies further evidence of a growth in the business, but not necessarily a material change in the character and nature of activities at the Pier.***

### **The Third Issue - are the 1999 Regulations applicable?**

- 6.43. Particular reference should be made to the advice given in Figure I “Establishing whether a development requires an EIA” in Circular 02/99.
- 6.44. Consideration must be given to whether the works carried out at Wapping Pier amount to a Schedule 1 or Schedule 2 development or whether they fall outside of the scope of the 1999 Regulations.
- 6.45. The first part of this consideration relates to Schedule 1. There is only one class of development in this schedule that conceivably relates to the case in question. That is 8 (b) – “*Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes*”.
- 6.46. The PLA has not been able to provide evidence to enable a clear conclusion to be reached as to whether Wapping Pier is capable of taking a vessel of over 1,350 tonnes. However, it has been noted by the Council that the largest vessel in the WRC fleet, mv Silver Sturgeon, is 1,007 tonnes and it must be moored to the upstream Berthing Dolphin, as Tunnel Pier alone appears not to be capable of sustaining the weight of that vessel. For the reasons given below, however, the absence of clear evidence on that point is not considered to be determinative.
- 6.47. The provenance of the Berthing Dolphin has been set out above and it has been ascertained that it was installed in 1997. At the time of its instalment, the Council were not made aware of its existence. Because it was put in place in 1997, it is immune from any enforcement action and therefore there is no case to be considered under the 1999 Regulations. In any event; Schedule 1 only applies to applications received or applications lodged in relation to development undertaken after the 1999 Regulations came into effect (14<sup>th</sup> March 1999),

- 6.48. Turning to Schedule 2, it is noted that 'piers' are not mentioned in Schedule 2. However, in taking a broad interpretation of the 1999 Regulations, there is one class of development in this schedule that could conceivably relate to the case in question. That is "10 – *Infrastructure Projects*" and specifically the applicability of sub-classes:
- (c) *Intermodal transshipment facilities and of intermodal terminals*; and,
- (g) *Harbours and Port Installations*.
- 6.49. These descriptions of development are not considered to relate to the operation of Wapping Pier. It is not used as any part of an intermodal transport system. It is also not a port or harbour with all that would entail in the normal use of such words. On those grounds alone, it could be concluded that Wapping Pier does not fall within Schedule 2 of the EIA Regulations.
- 6.50. However, the clear intention of the European Directive was for LPAs to take a broad interpretation of the need for Environmental Assessment to be applied to potential development for which is a likelihood of a significant environmental effect. As such, it is appropriate to consider not only the definitions of development falling in Schedule 1 and Schedule 2, but also the question of the indicative thresholds for such classes of development and the potential for any significant environmental effects.
- 6.51. In addition; in Schedule 2, Class 13 refers to (i) a "*change to or extension of development of a description listed in Schedule 1...*" (ie which includes a pier); and (ii) "*the change or extension may have significant adverse effects on the environment*"; and (iii) "*the thresholds and criteria in Column 2 of the paragraph of this table indicated below applied to the change or extension (and not to the development as changed or extended)...*" (meaning, for our purposes, where the pier was extended by an addition to the pier which exceeds 1 hectare then it may come within the relevant class listed in Schedule 2).
- 6.52. The threshold for Schedule 1 developments and schedule 2 class 13 is one hectare [10,000 square metres]. It is possible to consider the site area of Wapping Pier in a number of different ways:
- 1) The footprint of Wapping Pier (i.e. the walkway from King Henry's Stairs to and including Tunnel Pier, together with Tower Pier and the Downstream Collar Barge) amounts to 701 square metres.
  - 2) If one includes the area of the river covered by the entire fleet moored at Wapping Pier together with the footprint in (i) above, the total 'site area' is 2,159 square metres.
  - 3) Even if one were to add the river lying between the landward side of Wapping Pier between the Berthing Dolphin at its upstream extremity and the most extreme downstream end of the

Downstream Collar Barge, to the area in (ii) above, the total site area amounts to 8,157 square metres.

- 6.53. This method in (3) above of the looking at the question of the site area would be quite notional, and indeed extreme, but it serves to illustrate that Wapping Pier does not bear any meaningful resemblance to the scale of a project that is covered by the Regulations. So, given a more realistic interpretation of the site area of Wapping Pier, the scale of the development at Wapping Pier, is not considered to be covered by the 1999 Regulations.
- 6.54. It is acknowledged that Wapping Pier lies wholly within a designated conservation area. However, a conservation area is not defined as a 'sensitive area' for the purposes of Schedule 3 to the 1999 Regulations.
- 6.55. Furthermore, given the provenance of each part of Wapping Pier set out in a preceding section of this report, it has been conclusively shown that the provision of each part of the complex is immune from enforcement action either by virtue of being permitted development or through effluxion of time and therefore there is no case to be considered under the 1999 Regulations.

**Other Issues relating to the matter of complaint:**

- 6.56. The historic grant of planning permission to the site on the riverbank adjoining King Henry Stairs has no bearing on the consideration of whether the works and the use of Wapping Pier are lawful. Indeed, that permission has lapsed, as it has not been implemented within the five year rule.
- 6.57. The implications of the situation regarding the alleged blocking of a public right of way at King Henry Stairs is of no relevance to the consideration of whether the works and the use of Wapping Pier are lawful. That is a separate issue for consideration by the Council, as Highway Authority.

## 7. SUMMARY OF CONCLUSIONS

7.1. The conclusions made above are drawn together below to demonstrate the final concluding remarks in closing this investigation.

- (1) Works and operations (constituting development) carried out by the PLA (a statutory undertaker) on land at Wapping Pier (operational land) required for the permitted purposes set out in Schedule 2, Part 17, Class B of the GPDO would be 'permitted development'.
- (2) Works and operations (constituting development) carried out by WRC (a licence holder) cannot benefit from 'permitted development' rights under Schedule 2, Part 17, Class B of the GPDO.
- (3) The position and structure of Tunnel Pier pre-dates the advent of planning controls in 1948 and, as such, is therefore lawful.
- (4) There have been no works constituting development (for the purposes of section 55 of the 1990 Act) on Tunnel Pier since 1948 of which the Council, having undertaken due enquiries, is aware. Therefore, it is reasonable to conclude that there is no breach of planning controls regarding its current form at this site.
- (5) The current position of Tower Pier commenced in July 2000. The development (ie the mooring of Tower Pier downstream of Tunnel Pier) was carried out by the PLA. The PLA, as a statutory undertaker, had the benefit of permitted development rights pursuant to the GPDO to position the works on their operational land.
- (6) There have been no works constituting development (for the purposes of section 55 of the 1990 Act) on Tower Pier since it was moved to its current position in 2000 of which the Council, having undertaken due enquiries, is aware. Therefore, it is reasonable to conclude that there is no breach of planning controls regarding its current form at this site.
- (7) The steel piles are authorised with the benefit of full planning approval.
- (8) The mooring of the downstream collar barge downstream of Tower Pier was undertaken in August 2003. The development was carried out by the PLA. The PLA, as a statutory undertaker, had the benefit of permitted development rights pursuant to the GPDO to position the works on their operational land.
- (9) The instalment of the berthing dolphin by WRC in 1997 was unauthorised. However, the power to take any enforcement action

lapsed in 2001, 4 years after it was installed, in accordance with section 171B of the 1990 Act.

- (10) The whole of the structure known as Wapping Pier is the planning unit for the purpose of assessing the whether there has been a material change of use. The planning unit was extended in three phases between 1997 and 2003 by the addition of the upstream Berthing Dolphin in 1997, Tower Pier In 2000 and the downstream Collar Barge in 2003.
- (11) The installations of the Tower Pier pontoon and the Downstream Collar Barge were carried out under permitted development rights derived from Schedule 2, Part 17, Class B of the GPDO but the PLA did not itself institute any particular use of the facility thus created. The use of these structures for purposes defined in Schedule 2, Part 17, Class B of the GPDO persists in planning terms as the lawful use and remains to be taken up by the PLA or their lessees.
- (12) The material change of use instituted by WRC, who are now known without doubt to be licensees, of Tower Pier and the Downstream Collar Barge commenced after 1996 (ie in 2000). Therefore, as there is no express planning approval for the material change of use that has taken place, and it is not considered to be authorised by the GPDO, it is considered to be unlawful. There is no immunity from enforcement action, as the current activities on Tower Pier and the Downstream Collar Barge have not continued for more than 10-years.
- (13) The GPDO authorised introduction of Tower Pier and the Downstream Collar Barge, which has facilitated the intensification and expansion of the operation. However this more extensive use by WRC (rather than by the PLA or their lessees) requires planning permission because the GPDO does not authorise development in the form of a material change of use by WRC (a licence holder). The PLA or their lessee did not carry out that act of development so as to bring it within the GPDO, and no other planning permission exists for the change of use.
- (14) There has been a material change in the character and nature of the activities at the Pier, in respect of additional office facilities and the preparation of meals at the Pier, which was made possible by the addition of Tower Pier in 2000.
- (15) A commensurate increase in staff generally would indicate a growth in the business, but may also result from a material change of use due to the increase in office and catering activity with apparently increased impacts of residential amenity.
- (16) The introduction of the Downstream Collar Barge in 2003 to handle the greater quantity of waste produced by the operation

signifies further evidence of a growth in the business, but not necessarily a material change in the character and nature of activities at the Pier.

- 7.2. Ultimately, whether it is argued that the analysis of Wapping Pier should be undertaken on the basis of its separate parts or as one planning unit, there is now evidence that WRC need a formal planning permission to carry on their current use of the complex, which is as the operational base for a river cruise business, including office, storage, staff mess room, catering and associated waste storage facilities.

## 8. ENFORCEMENT CONSIDERATIONS

### General principles

- 8.1. Firstly, it should be noted that the power to instigate enforcement action lies solely with the LPA. Secondly, the power to take enforcement action is discretionary. Thirdly, the level of enforcement action should be commensurate with the harm caused by the breach of planning control. These principles are set out in PPG18 and referred to above.
- 8.2. In considering whether to take enforcement action in each case and, bearing in mind that enforcement action is discretionary in any event, the Council has to weigh up whether enforcement action would be expedient and proportionate. Considerations relevant to deciding whether it is expedient to enforce include:
  - a) the detriment to amenity caused by the development;
  - b) the harm of the placement of the Pier versus the benefits from it;  
and
  - c) the fact that enforcement is an option of last resort.
- 8.3. The Guidance in PPG18 sets out that the LPA need not take enforcement action for technical breaches of planning control. But the 'developer' ought to be invited to remedy the breach by making a retrospective planning application. The Guidance sets out what steps the LPA should take should the 'developer' choose not to submit an application. Essentially, where there is no demonstrable harm to public interest then the matter may be allowed to lie.
- 8.4. The Guidance sets out that the matter deserves more positive action by the LPA where there are issues of public interest arising from demonstrable harm to amenity. In these cases the LPA needs to consider whether the grant of conditional planning approval would remedy the situation and alleviate the harm to amenity.
- 8.5. The Guidance sets out that the 'developer' should be invited to apply for planning permission, as that will allow the LPA the opportunity to impose such conditions. In the event that the 'developer' does not apply, then the LPA can serve an enforcement notice, as in this way it can specify the measures to be taken to address the harm caused by the development.
- 8.6. Government advice in PPG18 clearly sets out that the LPA should not take enforcement action without in the first place seeking to negotiate the appropriate remedy.
- 8.7. Moreover, the guidance is very clear that only in circumstances where there is no possibility of an acceptable solution should the LPA take the most serious measures to remove the development.



### **Specific measures in the case of Wapping Pier**

- 8.8. The situation in the case of Wapping Pier is complicated given the evolution of the complex. Essentially, as has been shown by the evidence gathered, Tunnel Pier is a lawful structure; the PLA were responsible for installing Tower Pier and the Downstream Collar Barge under permitted development rights; WRC have express approval for the Steel Pile Dolphin; and, the Berthing Dolphin is immune from enforcement action under the 4-year rule on structures.
- 8.9. However, on balance it is considered that there has been a material change of the use of the Pier by WRC, which is unlawful and requires planning permission. Therefore, there are grounds for taking enforcement action against this breach of planning control, if considered expedient on planning merits.

### **Expediency considerations**

- 8.10. A decision has to be made as to whether to invite a planning application or to move directly to serve an enforcement notice. DOE (now DCLG) Circular 8/93 (Award of Costs Incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings) paragraph 24 of Annex 3 (Unreasonable Behaviour Relating to the Substance of the Case, including Action Prior to Submission of Appeal) points out:

*“24. It will generally be regarded as unreasonable for a planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission, if it is concluded, on an enforcement appeal to the Secretary of State, that there is no significant planning objection to the breach of control alleged in the enforcement notice. Accordingly, planning authorities who issue a notice in these circumstances will remain at risk of an award against them of the appellant's costs in the enforcement appeal...”*

- 8.11. Paragraphs 5 to 22 of PPG 18 (Enforcing Planning Control) sets out the Secretary of State's expectations for how planning authorities should consider breaches of planning control and particularly at paragraphs 14 to 17 gives advice about unauthorised development by small businesses.

*“14. Although some breaches of control are clearly deliberate, the LPA may find that an owner or operator of a small business, or a self-employed person, has carried out unauthorised development in good faith, believing that no planning permission is needed for it. The cost of responding to enforcement action may represent a substantial financial burden on such a small business, or self-employed person. LPAs should consider this in deciding how to handle a particular case.”*

- 8.12. We have to be able to show, on appeal, that the Council had reasonable grounds for concluding that the breach of control would unacceptably affect public amenity and any harm could not be controlled by the imposition of a condition or the negotiation of a planning obligation, and it was expedient to issue the enforcement notice in the particular case.

- 8.13. As can be seen from this report, the arguments as to whether planning permission is needed for the development are far from clear-cut and remain arguable. It is necessary therefore to examine the development plan and other material considerations carefully to judge whether there is a realistic prospect of a planning permission being granted for the use of Wapping Pier as the operational base for a river cruise business, including office, storage, staff mess room, catering and associated waste storage facilities.
- 8.14. In making this judgement, it must be remembered that there would be the opportunity to impose conditions or to negotiate a legal agreement in order to control the development. This judgement therefore cannot amount to a full assessment of the planning merits of the development against the development plan, because to do so at this stage would be wrong as the Council would not have the benefit of the results of consultation on or publicity of the planning application. Any conclusions would therefore be premature and the Council could be accused of having predetermined a planning application before it had received it.
- 8.15. The development plan (the London Plan 2004 and the Tower Hamlets Unitary Development Plan 1998) as well as the emerging development plan (the current alterations to the London Plan and the submission version of the Tower Hamlets Local Development Framework) will therefore be examined in order to identify the main planning considerations and to ascertain whether the planning policy framework clearly points to the development being unacceptable or whether there is at least a reasonable prospect of a planning permission being granted.
- 8.16. Of relevance to this analysis is the fact that the site is located within the Wapping Pierhead Conservation Area and that there are a number of listed buildings near Wapping Pier:
- St John's Wharf F & G Warehouse, 104-106 Wapping High Street (LB927)
  - 108 & 110 Wapping High Street (LB725)
  - St John's Wharf 'K' Warehouse, 112 Wapping High Street (LB622(a)(a))
  - King Henry Wharves 'A', 'B', 'C' and 'D' Warehouse, 118-120 Wapping High Street (LB623(a))
  - Gun Wharves, 124-130 Wapping High Street (LB723)

### **The Development Plan**

#### London Plan 2004

- 8.17. With the publication of his spatial development strategy, The London Plan, in February 2004, the Mayor has put in place a strategic framework to manage the complexities of London's growth, so that all Londoners can share in its success.

- 8.18. Policies in the London Plan are necessarily strategic and are designed to guide development in London as a whole. Whilst many of the policies in the plan will touch on the development at Wapping Pier, the following are the most relevant:

**3B Working in London**

Policy 3B.10 Tourism industry

**3C Connecting London – improving travel in London**

Policy 3C.2 Matching development to transport capacity

**3D Enjoying London**

Policy 3D.6 Visitors accommodation and facilities

Policy 3D.12 Biodiversity and nature conservation

**4A London’s metabolism: using and managing natural resources**

Policy 4A.14 Reducing noise

**4B Designs on London**

Policy 4B.10 London’s built heritage

Policy 4B.11 Heritage conservation

Policy 4B.12 Historic conservation-led regeneration

Policy 4B.14 Archaeology

**4C The Blue Ribbon Network**

Policy 4C.1 The strategic importance of the Blue Ribbon Network

Policy 4C.2 Context for sustainable growth

Policy 4C.3 The natural value of the Blue Ribbon Network

Policy 4C.10 Historic environment

Policy 4C.11 Conservation areas

Policy 4C.13 Passenger and tourism uses on the Blue Ribbon Network

Policy 4C.16 Increasing sport and leisure use on the Blue Ribbon Network

Policy 4C.19 Moorings facilities on the Blue Ribbon Network

Policy 4C.23 Safety on and near to the Blue Ribbon Network

Policy 4C.24 Importance of the Thames

Early Alterations to the London Plan 2006

- 8.19. The Mayor undertook Early Alterations to the London Plan to address pressing housing provision, waste and minerals issues. These were subject to an Examination in Public in June 2006, which was led by an independent panel. The Early Alterations were published in December 2006, and form part of the London Plan. The issues raised in these alterations do not materially affect the development at Wapping Pier.

Tower Hamlets Unitary Development Plan 1998

- 8.20. Wapping Pier falls within the following policy designations on the proposals map:

- Flood Protection Area
- Site of Nature Conservation Importance
- Area of Archaeological Importance
- Strategic Riverside Walk

- 8.21. Close to the site is “Commitment and Proposal No 148 – Wapping High Street Road Improvement Line”. This does not directly affect the development.
- 8.22. Part 1 of the UDP sets out the strategic policies for the borough. Whilst these clearly relate to the development at Wapping Pier, they set out high level aims and objectives rather than detailed criteria against which a development could be judged, it would be unreasonable to conclude at this stage that they clearly point to the development being unacceptable in principle. Rather, they indicate the aspects of the development at Wapping Pier that will need careful consideration. For example, the environment policies (ST4 to ST9), the economy and employment policies (particularly ST15 and ST18), the transport policies (particularly ST28 and ST32), the arts, entertainment and tourism policies (particularly ST42 and ST44), and the public utilities and flood defences policies (particularly ST54) will all have to be considered and the views of appropriate statutory and other consultees sought.
- 8.23. Whilst many of the policies in part 2 of the UDP will touch on the development at Wapping Pier, the following are the most relevant:

## **CHAPTER 2 THE ENVIRONMENT**

### **SECTION 1 GENERAL DESIGN AND ENVIRONMENT REQUIREMENTS**

DEV2 Environmental Requirements

DEV4 Planning Obligations

### **SECTION 2 URBAN DESIGN AND CONSERVATION**

#### **Conservation Areas**

DEV25 New Development in Conservation Areas

DEV26 Small Scale Proposals

#### **Historic Buildings and Structures**

DEV38 Preparation of Schemes of Preservation & Enhancement

DEV39 Development Affecting the Setting of a Listed Building

#### **Archaeology and Ancient Monuments**

DEV43 Protection of Archaeological Heritage

DEV44 Preservation of Archaeological Remains

DEV45 Development in Areas of Archaeological Interest

#### **Riverside, Canalside, Docks & Other Water Areas**

DEV46 Riverside, Canalside, Docks & Other Water Areas Protection of Waterway Corridors

DEV49 Moored Vessels and Structures

### **SECTION 3 ENVIRONMENTAL PROTECTION**

#### **Environmental Impact of Development**

DEV50 Environmental Impact of Development Noise

#### **Litter and Waste Control**

DEV55 Development and Waste Disposal

DEV56 Waste Recycling

### **SECTION 4 THE NATURAL ENVIRONMENT**

#### **Nature Conservation and Ecology**

DEV57 Development Affecting Nature Conservation Areas

DEV58 Enhancement of Nature Conservation Sites

DEV62 Development Adversely Affecting Nature Conservation Areas

**CHAPTER 4 - THE ECONOMY AND EMPLOYMENT****Promoting Employment Growth**

EMP2	Retaining existing employment uses
EMP4	Expansion of existing firms
EMP6	Employing local people

**Small Businesses**

EMP8	Encouraging small business growth
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**Environmentally Intrusive Activities**

EMP15	Sites causing nuisance
EMP16	Relocation

**CHAPTER 6 TRANSPORT****Public Transport**

T4	River Bus
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**Transport and Development**

T15	Location of New Development
T16	Traffic Priorities for New Development
T17	Planning Standards

**Pedestrians**

T20	Strategic Pedestrian Route
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**CHAPTER 12 PUBLIC UTILITIES AND FLOOD DEFENCES****Tidal and Flood Defences**

U2	Development in Areas at Risk from Flooding
U3	Flood Protection Measures

**The Emerging Development Plan****Further Alterations to the London Plan**

- 8.24. The Mayor has also prepared draft Further Alterations to the London Plan which are available for public comment. The consultation period runs from 28 September to 22 December 2006. The alterations are based on the Mayor's Statement of Intent to review the London Plan, which was published in December 2005. These alterations are at an early stage in the process of preparation and therefore carry little weight in the decision making process. The general thrust of the policies relating to Wapping Pier is not materially altered by these proposed changes.

**Tower Hamlets Local Development Framework (Submission Stage)**

- 8.25. Under the new system of development plans, introduced under the Planning and Compulsory Purchase Act 2004, the Council has embarked on the production of a suite of documents to provide a new policy framework for Tower Hamlets. The two documents relevant to this site are the "Core Strategy and Development Control Development Plan Document" and the "City Fringe Area Action Plan Development Plan Document". The Council submitted the suite of documents for independent examination to the Secretary of State on the 9th of November 2006.

## Core Strategy And Development Control DPD

8.26. Wapping Pier falls within the following policy designations on the proposals map:

- Site of Importance for Nature Conservation (CP33)
- Blue Ribbon Network (CP36)
- Flood Risk Area (CP37)
- Conservation Area (CP49)
- Area Action Plan Boundary (City Fringe)

8.27. Whilst many of the policies in the Core Strategy will touch on the development at Wapping Pier, the following are the most relevant:

### **2. Implementing the Core Strategy**

IMP1 Planning Obligations

### **3. Spatial Strategy**

The Community Plan Vision

Spatial Vision

Objectives

Crosscutting Themes for a Sustainable Community

CP1 Creating Sustainable Communities

CP2 Equality of Opportunity

CP3 Sustainable Environment

CP5 Supporting Infrastructure

### **4. Creating and Sharing Prosperity**

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

### **6. Sustainable Environment**

CP31 Biodiversity

CP33 Sites of Importance for Nature Conservation

CP36 The Water Environment and Waterside Walkways

CP37 Flood Alleviation

CP39 Sustainable Waste Management

### **7. A Well-connected Borough**

CP41 Integrating Development with Transport

CP45 The Road Hierarchy

### **8. A Well-designed Place for People**

CP46 Accessible and Inclusive Environments

CP49 Historic Environment

### **General Development Control Policies**

DEV1 Amenity

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

### **10. Economy and Employment**

EE2 Redevelopment /Change of Use of Employment Sites

EE3 Relocation of Businesses outside of Strategic Industrial Locations and Local Industrial Locations

#### **14. Open Space**

OSN3 Blue Ribbon Network and the Thames Policy Area

#### **15. Conservation**

CON1 Listed Buildings

CON2 Conservation Areas

#### **Planning Standards**

Planning Standard 1: Noise

Planning Standard 2: Residential Waste Refuse and Recycling Provision

Planning Standard 3: Parking

#### City Fringe Area Action Plan DPD

- 8.28. On the Wapping sub-area diagram, the shore near Wapping Pier is identified as a Mixed Use area. The following policies are most applicable to the development:

Policy CFR1	City Fringe spatial strategy
Policy CFR2	Transport and movement
Policy CFR8	Waste
Policy CFR21	Employment uses in Wapping sub-area

#### **The Main Planning Considerations**

- 8.29. The main planning considerations raised by the development at Wapping Pier are:

1. The principle of the development
2. Impact on residential amenity
3. Impact on heritage conservation
4. Impact on nature conservation
5. Highway issues
6. Flooding issues

#### The principle of the development

- 8.30. The development plan contains a number of policies that could be seen as supporting the provision of a pier within the River Thames serving the tourism and leisure industry in London (London Plan policies 3B.10, 3D.6 and the Blue Ribbon Network policies and UDP policies DEV 46 & 49, EMP 2, 4, 6 & 8 and T4). That is not to say that the development is acceptable per se, merely that there does not appear to be any clear policy presumption against it.

#### Impact on residential amenity

- 8.31. It is clear from the representations received from local residents that the development, as it is currently operated, is causing some harm to the amenities of those residents. This is principally around the impacts of noise and smells from the catering elements of the operation, including associated waste disposal. Concern is also expressed about water treatment and sewage issues. These are all issues that may be

capable of control through the imposition of planning conditions or by the negotiation of a legal agreement. At this stage, it is not possible to conclude that the development is intrinsically unacceptable from an amenity point of view.

#### Impact on heritage conservation

8.32. In assessing the development, the Council will have to discharge its duties under Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of:

- preserving or enhancing the character or appearance of the Wapping Pierhead Conservation Area; and
- preserving the setting of nearby listed buildings.

8.33. It must be remembered that we are dealing with the use of a lawful structure and not the impact of the structure itself. A functioning pier has been in this location for many years, is therefore an intrinsic part of the character of the area, and plays an important role in the setting of the listed buildings. The Council has recently issued for consultation purposes, draft Character Appraisals and Management Guidelines for this conservation area and this will guide the detailed assessment that will be necessary. At this stage it is not possible to conclude that the development is intrinsically unacceptable from a heritage conservation point of view.

8.34. The site is within an Area of Archaeological Importance in the UDP. This is unlikely to affect the principle of the development and would need to be assessed with the aid of consultees.

#### Impact on nature conservation

8.35. The site is within a Site of Nature Conservation Importance in the UDP. This is unlikely to affect the principle of the development and would need to be assessed with the aid of consultees.

#### Highway issues

8.36. Wapping High Street serves the development. On-street parking is controlled throughout the area. Although the traffic impacts of the development will need to be carefully assessed, it is very unlikely that a development of this scale, served from a highway such as Wapping High Street, would be fundamentally unacceptable from a planning point of view. It is also likely that if there are areas of concern, such as conflicts at peak times, these should be capable of control through the imposition of planning conditions or by the negotiation of a legal agreement. At this stage, it is not possible to conclude that the development is intrinsically unacceptable from a highway point of view.



### Flooding issues

- 8.37. The site is within a Flood Protection Area in the UDP. This is unlikely to affect the principle of the development and would need to be assessed with the aid of consultees.

### **Conclusions on expediency issue**

- 8.38. The analysis above shows that, whilst there are issues associated with the current use at Wapping Pier that will need careful examination, there are no issues of principle that can be identified at this stage that would suggest that there is not at least a reasonable prospect of a planning permission being granted for the development.
- 8.39. Consideration will need to be given to what steps should be taken to mitigate any demonstrable harm caused to public amenity. Measures such as the time of operation of the complex, the noise levels to be observed, the lighting levels, the emission of fumes from kitchens, the arrangements for waste storage, etc are all potentially capable of being safeguarded through the use of planning conditions.
- 8.40. On balance therefore a planning application should be sought from WRC.

## **9. RECOMMENDATIONS**

- 9.1. WRC should be invited to apply for planning permission for their operations at Wapping Pier, in order that the acceptability of the use can be considered along with whether appropriate planning conditions could be imposed or planning obligations negotiated, in accordance with advice to planning authorities in PPG18 at paragraph 8.
- 9.2. In the event that WRC do not apply, the council should formally consider a report advising on the expediency of serving an enforcement notice requiring steps that are deemed necessary for the acceptable operation of the complex in the interests of public amenity, in accordance with advice to planning authorities in PPG18 at paragraph 9.
- 9.3. WRC should be given 28 days to decide whether they are going to make a planning application and a further 56 days to prepare and submit the relevant documents. On the basis of the analysis and conclusions in this report, the period for taking enforcement action against the use of Wapping Pier by WRC expires in July 2010; therefore these timescales would not prejudice the Council's ability to take enforcement action, if it should decide to do so.