

UMBEG: MEETING 13TH JANUARY 2014

ADVICE ON TRESPASS TO MOORINGS CLAIMS

This local authority has the following powers to prevent boats from mooring on our land:

1. S58 of the River Thames Navigation Byelaws 1993:

“The Master of every vessel shall obey and conform to the directions of any Officer of the Authority relating to the use navigation mooring or unmooring of such vessel”.

2. S16(4) of the Thames Conservancy Act 1950:

“...the Conservators (including the Council) shall before raising, removing, blowing up or destroying any such vessel under the provisions of this section give the owner of the vessel 24 hours’ notice of their intention to do so and a further 12 hours after the expiration of the notice if the owner raises an intention to remove the vessel”.

3. S77 Criminal Justice & Public Order Act 1994:

The Council has the ability to make a direction that trespassers have to leave land; it is a criminal offence if they do not comply.

4. Common law action in trespass Part 55 Civil Procedure Rules 1998

A. The claim:

- i. can be issued in the County Court by way of either a group *or* individual claim. Alternatively, the claim can be issued in the High Court if there is a substantial risk of public disturbance or of serious harm to people or property requiring the court to make an immediate decision.
- ii. The Defendant should be the party in occupation or possession of the property. If the party's name or names are unknown, the Defendant is named as "persons unknown".
- iii. The Particulars of the Claim should be accompanied by a witness statement with exhibits from the Officer serving the Notice to Quit.
- iv. The burden of proof is on the Claimant to prove both ownership of the property and the trespass onto the property.
- v. The Particulars of the Claim should refer to a plan attached to the Particulars which must clearly delineate in red the whole of the area in the Council's possession including the land that the Defendant is moored to. No injunction is necessary.

- vi. A claim for trespass can be expedited and a hearing date can be requested for the matter to come before a Judge within a few days. Two days notice must be given for non-residential land, otherwise it is five days.
- vii. Where trespassers have to be removed immediately an even more accelerated option is available by way of an interim possession order. A further hearing is required to convert the order to a final order.
- viii. Once a Possession Order is granted the Order may need to be enforced by a bailiff's warrant if the trespassers have not left voluntarily.

B. Bailiffs: options for taking possession

- i. The bailiffs will need a warrant of possession.
- ii. The County Court bailiff who has previously been instructed in the removal of boats from the boatyard in Jericho has confirmed that in that case the bailiffs went onto the boat to remove the owner, and the boat was loaded onto a low loader by crane and taken to a site for the owner to remove (at the owner's expense, including issuing fee).

C. Warrant of Restitution:

- i. A Warrant of Restitution can be issued to recover land from occupants who were neither parties to the original proceedings nor dispossessed by the original order, provided there is a plain

and sufficient nexus (or link) between the Order for Possession
and the need to effect further recovery of the land.

- ii. Otherwise it will be necessary to bring new proceedings
- iii. The breach of this order is an arrestable offence.

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For Head of Law & Governance

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