

SUBMISSION TO THE LICENSING SUB-COMMITTEE – M238639 Harbour Kitchen

Independent Certification and Fitness for Purpose

The applicant places reliance upon the fact that the Harbour Kitchen and its gantry or walkway were “*professionally designed and manufactured*”. It also refers to a manufacturer's technical statement concerning structural integrity, buoyancy and stability, to “*Environmental Health having reviewed buoyancy information*” (ref. 1.4), and to the “*Fire Department*” (ref. 1.2) having assessed the gantry as an access and escape route.

The applicant should identify the organisation referred to as the “Fire Department”, the officer or officers involved, the date and precise scope of the inspection, and any report, assessment or certification issued.

Similarly, the applicant does not identify which officer within Environmental Health reviewed the buoyancy information, what relevant marine engineering qualifications or expertise that person possesses, the scope and nature of the review, or any report, assessment or certification issued. The applicant should clarify whether that review constituted an independent assessment of the structural stability or marine engineering suitability of the floating structure.

The issue for the Committee is therefore not whether the applicant has employed competent professionals. It is whether there is independent evidence that the completed structure has been examined and verified as safe and fit for the particular use proposed.

The important distinction is between:

- professional design;
- professional manufacture;
- inspection by a public authority for a particular purpose; and
- independent examination and certification or verification of the completed structure as fit for its intended purpose.

A professional designer's opinion that a structure has been properly designed is not the same as an independent examination of that design and the completed structure by a third party with no involvement in its design or manufacture.

The issue for the Committee is therefore not whether the applicant has employed competent professionals. It is whether there is independent evidence that the completed structure has been examined and verified as safe and fit for the particular use proposed.

If the Harbour Kitchen has been designed to fall outside of the statutory MCA certification regime, this may mean that an MCA certificate is not legally required. It does not, however, establish that independent verification of safety and fitness for purpose is unnecessary. Independent verification could potentially be provided by an appropriately qualified marine surveyor, an MCA-authorized Certifying Authority where applicable, a Classification Society or another competent independent marine engineering body.

The MCA's certification arrangements illustrate the distinction. Where the relevant small commercial vessel regime applies, vessels are subject to examination and certification by authorised Certifying Authorities against the applicable safety requirements and codes.

The Committee should therefore ask the applicant to identify:

1. The design standard or code used.
2. The professional responsible for the structural and stability design.
3. The calculations supporting buoyancy and stability.
4. The maximum passenger and other loading for which the structure has been designed.
5. Whether uneven loading, passenger movement, wind loading, flooding, grounding and other foreseeable operating conditions have been considered.
6. Whether the completed structure has been independently surveyed.
7. Whether any Classification Society, MCA-authorized Certifying Authority, marine surveyor or other independent competent body has examined or certified the structure.
8. The precise scope of the Fire Service and Environmental Health inspections, including whether either undertook any assessment of structural integrity, stability or buoyancy and, if so, on what technical basis.
9. Whether the insurer providing the Harbour Kitchen's public liability/third-party insurance has been informed of the nature of the floating structure, its intended commercial use, passenger capacity and regulatory/certification status, and has confirmed that cover remains valid on that basis..
10. Whether the insurer has required any independent marine survey, safety certificate, stability assessment or other independent verification as a condition of cover.

The relevant question is therefore:

What independent evidence demonstrates that the completed Harbour Kitchen has adequate structural integrity, buoyancy and stability and has been independently verified and certified as safe and fit for the intended commercial use?

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The Gantry and the Applicant's Assertion that it is "Not Connected" to the Harbour Wall

The Absence of Physical Attachment Does Not Determine Legal Connection

The legal status of a structure cannot necessarily be determined solely by its physical method of attachment. The authorities require consideration of the objective circumstances, including the purpose and function of the structure.

The applicant has established a physical and functional relationship with the harbour wall. It then seeks to attach a legal consequence to the absence of a permanent fixing. The authorities demonstrate that such a conclusion does not automatically follow.

The applicant claims that the Harbour Kitchen does not come under the jurisdiction of BCP for reasons of the gantry or walkway *not* being physically connected to the harbour wall.

That proposition does not follow from the authorities relied upon in Appendix: A

These authorities demonstrate why the absence of a physical fixing does not, by itself, establish that there is no legal connection with Council land.

The legal conclusion supports the following propositions:

1. **Physical attachment is not the sole test of legal connection.**
2. **Juxtaposition without physical contact can be sufficient in law.**
3. **Objective purpose is more important than mechanical attachment.**
4. **Physical separation does not necessarily determine legal connection.**
5. **The Committee is entitled to consider the substance and reality of the access arrangement.**

Accordingly, there is a substantial legal basis for concluding that the absence of a permanent physical fixing should not, by itself, be treated as sufficient to determine whether the gantry has a legal connection with, or constitutes a use or occupation of, Council land. That is a question which should be determined on the evidence and the applicable statutory framework

If the applicant's interpretation were accepted, it could set a precedent for further commercial operations along the rivers and harbour simply by engineering a physical separation between its access structure and the quay, banks of the river, and harbour.

APPENDIX: A

1. Holland v Hodgson

Holland v Hodgson (1872) LR 7 CP 328 establishes that the question whether an object has become part of the land depends principally upon the degree of annexation and the purpose or object of annexation.

The case demonstrates that permanent mechanical attachment is not an absolute requirement. The circumstances and purpose for which an object is placed in a particular position are relevant to its legal character.

Relevance: The absence of a permanent fixing to the harbour wall does not, by itself, determine whether the gantry has a legal or functional connection with the land.

2. D'Eyncourt v Gregory

D'Eyncourt v Gregory (1866) LR 3 Eq 382 demonstrates that objects can form part of land despite resting by their own weight and without mechanical attachment, where their position and purpose form part of the permanent arrangement of the property.

Relevance: Physical attachment is therefore not necessarily a prerequisite to legal connection.

3. Elitestone Ltd v Morris

In Elitestone Ltd v Morris [1997] 1 WLR 687, the House of Lords considered a bungalow resting on concrete pillars without being mechanically attached to them.

The case confirms that the underlying issue is one of accession, and that the legal character of a structure cannot necessarily be determined by the existence or absence of a physical fixing alone. The question is one of fact and degree.

Relevance: The applicant's apparent proposition that “*no mechanical attachment = no connection*” does not follow from the authorities.

4. Savoye & Savoye Ltd v Spicers Ltd

Savoye & Savoye Ltd v Spicers Ltd [2014] EWHC 4195 (TCC) provides modern guidance on the assessment of annexation. Relevant considerations include the mode and extent of annexation, removability, purpose and the objective circumstances.

The judgment also recognises that accession may arise through juxtaposition without a physical bond, drawing upon D'Eyncourt and Elitestone.

Relevance: The legal assessment must therefore consider the objective physical relationship and purpose of the gantry, rather than simply whether it is mechanically attached.

5. Lictor Anstalt v Mir Steel UK Ltd

Lictor Anstalt v Mir Steel UK Ltd [2014] EWHC 3316 (Ch) reinforces the need to determine the legal character of an installation by reference to the objective circumstances, rather than merely the description given to it by the parties.

Relevance: The applicant's description of the gantry as “not connected” is not, of itself, determinative. The Committee should consider the actual physical arrangement and the purpose for which the gantry is installed.

6. Spielplatz Ltd v Pearson

In Spielplatz Ltd v Pearson [2015] EWCA Civ 804, the Court of Appeal considered the nature and purpose of a structure and the objective circumstances in determining whether it had acceded to the land.

Relevance: The appropriate question is therefore not simply what the applicant calls the arrangement, but what the objective physical arrangement is and what purpose the gantry serves in that location.

7. Mew v Tristmire Ltd

Mew v Tristmire Ltd [2011] EWCA Civ 912 concerned houseboats in a harbour and is relevant because the Court of Appeal held that the houseboats remained chattels.

The case is distinguishable from the present issue. The question here is not simply whether the floating Harbour Kitchen remains a movable structure. The specific issue is the gantry, which the applicant itself describes as providing land-to-water access.

Relevance: The fact that the principal structure floats does not, by itself, determine the legal character or relationship of the separate access structure.

8. Application to the present case

The applicant's own evidence establishes three important facts.

First, the applicant states that the gantry is “*cushioned against the wall.*”

Second, the applicant states that the gantry provides “*land-to-water access*” to the premises.

Third, the applicant states that an agreement has been reached following discussions with BCP's legal team concerning the gantry.

The photographs supplied by the applicant show the gantry functioning as the access route between the shore and the floating premises.

These facts establish a clear physical and functional relationship between the gantry and the Council-controlled shore.

The authorities do not require the Committee to disregard that relationship simply because the gantry is not permanently fixed to the wall.

The relevant questions are therefore:

- 1. Where precisely is the gantry positioned in relation to the harbour wall?**
- 2. Does it touch, rest against, bear upon or otherwise interface with the wall?**
- 3. Why has it been installed in that particular position?**
- 4. What function does it perform in relation to the Council land and the floating premises?**
- 5. What was the nature and extent of the agreement reached with BCP?**

Whether those facts ultimately establish a legal connection, occupation or use of Council land is a matter for determination on the evidence. The applicant's assertion that there is no connection does not, by itself, answer the question.

9. Conclusion

The authorities have established a consistent principle: the absence of permanent mechanical attachment does not, by itself, determine the legal relationship between a structure and land.

The assessment must have regard to the objective circumstances, including physical relationship, purpose, function and degree of annexation.

On the applicant's own evidence, the gantry is positioned against the harbour wall and provides the land-to-water access to the floating premises.

The Committee should therefore consider the actual physical and functional arrangement, rather than treating the absence of a permanent fixing as determinative.