

Subject: Byelaws proposed by Richmond Upon Thames - OBJECTION  
From: "secretariat@bargee-traveller.org.uk" <secretariat@bargee-traveller.org.uk>  
Date: 06/11/14 15:36  
To: byelaws@communities.gsi.gov.uk  
BCC: "secretariat@bargee-traveller.org.uk" <secretariat@bargee-traveller.org.uk>

Dear Sir

On or about 26th September 2014 the London Borough of Richmond Upon Thames ("Richmond") published draft byelaws (concerning mooring on the river Thames within its jurisdiction) (the "Byelaws") on its website here:

[http://www.richmond.gov.uk/byelaws\\_and\\_local\\_legislation](http://www.richmond.gov.uk/byelaws_and_local_legislation)

The accompanying notice states that any objection to the Byelaws should be lodged with the SoS by 7th November 2014. The notice states that such an objection may be filed by e-mail to [byelaws@communities.gsi.gov.uk](mailto:byelaws@communities.gsi.gov.uk).

Richmond consulted on the Byelaws in 2012. The National Bargee Travellers Association ("NBTA") responded to this consultation. The NBTA was not invited to object (or otherwise) to the Byelaws when these were published by Richmond even though the NBTA was a respondent to the 2012 consultation.

The NBTA objects to the Byelaws on the grounds that they are repugnant to the general law, for the following reasons:

1 Art 29 of the Magna Carta of 1215 provides for a public right of navigation ("PRN") on, among other rivers, the River Thames including that which falls within the jurisdiction of Richmond. This was in effect codified in s.79(2) of the Thames Conservancy Act 1932.

Mooring is ancillary to navigation and part of navigation (see *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* [1978] ScotCS CSIH 3, *Tate and Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509 545, *Moore v British Waterways* [2009] EWHC 812 (Ch) and others).

Bye-law 54b of the Thames Navigation and General Bye-laws 1993 confirms the right to moor on the towpath.

Public quays exist throughout the Thames. On all land that the public has acquired the right of mooring or unloading, by whatever means, vessels may stay as long as they like, provided this right is exercised reasonably (J B Phear Esq: *A Treatise on Rights of Water*, Stevens and Norton 1859).

Therefore, boats may only be prevented from mooring on the towpath or on a public quay if they "loiter or delay" for longer than a reasonable time. There is no definition in law of what is a reasonable time in this context. The reasonableness of the length of stay depends on factors such as the circumstances of each boat and on river and weather conditions.

"Reasonable" is dependent upon the facts and cannot be laid down in advance (and thus

cannot be codified in the Byelaws) (see Moore v BW [2013] EWCA Civ 73 [63]).

The Byelaws effectively rescind the PRN (insofar as they effectively curtail mooring for a reasonable period of time within the jurisdiction of Richmond) and thus seek to rescind Art 29 Magna Carta. The Byelaws are neither primary nor secondary legislation.

2 The Byelaws seek to control (and prevent) mooring even in an emergency.

The master of a vessel is on responsibility for the conduct and safe passage of his crew, passengers, other crews and passengers, his vessel, other vessels, the public, public property and himself. Richmond is at all times subordinate to this essential objective.

If the river is in flood it is extremely dangerous. At particular times of year it can rise without warning and can remain in spate for protracted periods of time. The Environment Agency ("EA") (holding jurisdiction on the river itself) raise "red boards" (warning boards) at locks and caution masters of vessels not to navigate on the river while these boards are displayed. Hire boats must immediately cease navigation on EA instruction. It is not for Richmond to dictate how or where a master can seek safe haven for his vessel in such circumstances.

3 The tidal range at Teddington is substantial and because of the specific characteristics of the river, as the tide flows the current can be severe. Boats wishing to transit between Teddington and Thames Lock at Brentford (onto the Grand Union Canal) (ie downstream) or Thames Lock to Teddington (ie upstream) are admitted by the EA/Canal & River Trust ("CRT") just before the peak tide and as soon as the rising tide is deep enough respectively. This permits the vessel to ride the flowing tide downstream or ride the incoming tide upstream respectively. This is because it is dangerous to seek to "buck" the tide especially in low-powered vessels such as narrowboats. These transits are also arranged by liaison between the duty CRT lock keeper at Thames Lock and the EA lock keeper at Teddington (both of whom are on 24-hour call-out). The transit takes approximately the same time as the tide itself and therefore a small window exists with which to execute the vessel movement. If this goes wrong for whatever reason then the master is obliged to seek safe haven until the appropriate conditions return with the next tide. In a nutshell transiting between Teddington and Thames Lock comprises sophisticated navigation.

If a vessel fails to reach its objective before the respective tide is complete, and is obliged to seek safe haven, this has to be executed without recourse to Richmond. Richmond therefore has no place seeking to intervene through controlling mooring.

4 In relation to seeking "safe haven" within other jurisdiction is to suspend any mooring restrictions until the danger has passed. While this is technically unnecessary (noting the sovereignty of the master of a vessel) it remains the case that inexperienced skippers may feel obliged to execute dangerous manoeuvres even in the presence of danger if compelled to do so by an authority. The NBTA holds records of accidents that have taken place in such an instance. The suspension of mooring restrictions therefore makes it clear to such a master that marine safety is paramount. Richmond appears to be oblivious of this objective and is therefore acting irrationally.

5 When the consultation was carried out by Richmond in 2012 no effort was made by Richmond to contact any boat-dwellers in the Richmond area. Richmond is bound to take into account the housing needs of everyone within its jurisdiction including those who fall

under the definition of "traveller". The Secretary of State in his letter to the NBTA of 29th April 2009 confirmed that itinerant boat dwellers fall within the demographic grouping of "traveller".

There is no evidence that Richmond has carried out any assessment of nor taken into account the housing needs of itinerant boat dwellers within its jurisdiction, as it is required to do by virtue of s.225 of the Housing Act 2004. In promoting the Byelaws Richmond is effectively making itinerant boat dwellers within its jurisdiction homeless contrary to its statutory duty to prevent homelessness and prevent the break-up of strong communities.

6 There appears to be no evidence of active engagement by Richmond with the demographic that are adversely affected by the Byelaws making this demographic aware of the effect of the Byelaws and in particular the right of this demographic to raise objection to the SoS.

7 There is apparently no evidence that an Equality Impact Assessment ("EIA"), pursuant to the Equality Act 2010, has been carried out prior to the execution of the publication of the Byelaws.

The NBTA is aware that a proportion of the demographic that it represents possess protected characteristics as defined by the Equality Act 2010. The NBTA also notes that itinerant boat dwellers are inherently vulnerable people. The NBTA also notes that the choice to live on a boat is a major decision that most itinerant boat dwellers take for reasons of belief in the practice of living sustainably.

Irrespective of whether the authority of *Nicholson v Grainger* [2010] ICR 360 can be deemed to apply, not only would an EIA demonstrate that the effect of the Byelaws would be disproportionately severe on itinerant boat dwellers with protected characteristics but catastrophic to the demographic as a whole.

8 Following *Kay v UK* [2010] ECHR 37341/06 the ECHR determined that "home" was one of the most important aspects of life in a democratic society. While the State is not required to provide a home, once a citizen has established a home then the State is required to respect that home pursuant to Art 8 ECHR. The consequence of this is that the State is required to demonstrate proportionality in its actions that affect someone's home. In this context the State is afforded a narrow margin of appreciation in the execution of such actions.

Through the Byelaws Richmond is, in effect, purging its jurisdiction of itinerant boat dwellers and this is neither respectful of a boat dwellers' homes nor proportionate when considering its declared essential objective of managing its land.

For the above reasons the NBTA observes that the SoS is obligated to not grant approval of these Byelaws.

Yours faithfully

Nick Brown

Secretary

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