

CONSULTATION RESPONSE

Enforcement of Cambridge City Council's River Moorings Policy

GENERAL COMMENTS

NATIONAL BARGEE TRAVELLERS ASSOCIATION

This consultation response is from the National Bargee Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for itinerant boat dwellers on Britain's inland and coastal waterways. The term Bargee Traveller includes anyone whose home is a boat and who does not have exclusive use of a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has members on all the major navigation authorities' waterways and beyond.

VALIDITY OF CONSULTATION

As a public body Cambridge City Council is obliged to follow HM Government's Code of Practice on Consultation. This Code of Practice is based on the judgment in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168 ("Gunning"). Whenever consultation is carried out by a body that exercises statutory powers the consultation must comply with the requirements set out in Gunning. These are:

"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken".

In allowing a period of only 25 days for this consultation, Cambridge City Council has breached the Gunning requirements, which specify 12 weeks as the minimum time to allow those consulted to give intelligent consideration and an intelligent response. Cambridge City Council is therefore required to extend the period of this consultation until at least 24th April 2016.

THE POWERS OF PUBLIC BODIES

Like all public bodies, Cambridge City Council only has the powers that were conferred on it by statute. See for example *Moore v British Waterways* [2013] EWCA Civ 73; *Swan Hill (Developments) and Others v British Waterways Board* [1997] EWCA Civ 1089 and *McCarthy and Stone (Developments) Ltd v Richmond upon Thames LBC* [1989] UKHL 4. The Council has not provided any justification why its proposals for a civil contract law approach to enforcement of mooring stay times on the River Cam fall within the remit of its statutory powers. Therefore it must be assumed that Cambridge City Council does not have the power to impose and enforce the proposed civil contract law penalties and if the Council were to adopt this approach it would be acting *ultra vires*.

MOORING TIME LIMITS

Mooring stay times of as little as 6 hours and 48 hours contravene the law relating to the

Public Right of Navigation. There is a Public Right of Navigation on all navigable rivers in the UK. This includes the River Cam. The authority of Crown Estate Commissioners v Fairlie Yacht Slip Ltd [1978] Scot CS CSIH 3 confirms that while a Public Right of Navigation does not extend to the right to lay permanent mooring structures, where a Public Right of Navigation exists, it includes the right to moor for temporary periods using equipment that is intended to be, and can conveniently be, taken onto and carried on board the vessel in the ordinary course of use (such as ropes and mooring pins).

In the Fairlie Yacht Slip case, the Court made no ruling on what length of time constitutes "temporary". The reasonableness of the length of each stay depends on factors such as the circumstances of each boat and on river and weather conditions. Therefore to restrict mooring to 6 hours on all land owned by Cambridge City Council for boaters who do not hold a Residential Mooring Licence for that site is an unlawful and unreasonable interference with the Public Right of Navigation. As a public body the City Council is required to exercise statutory power in a reasonable manner following the authority of Associated Provincial Picture Houses v Wednesbury Corporation [1947] 1KB 223.

The proposed time limits are impractical as well as unlawful. They do not reflect the reality of navigating all year round as NBTAs members do. Circumstances such as flood; high winds; mechanical breakdown; illness; ongoing medical treatment; disability; pregnancy; family emergency and caring for vulnerable or elderly family members mean that Bargee Travellers may need to stay longer than a given time limit. The proposals for contract based enforcement will penalise them for circumstances that are beyond their control and no fault of their own. To impose this system of enforcement would be fundamentally unjust and unreasonable.

There should be no further restrictions on mooring on the River Cam. The restrictions that already exist should be relaxed, especially in winter when demand for visitor moorings is low. Boat dwellers who are either visiting Cambridge or permanently based in the city should be protected from unreasonable and arbitrary enforcement especially if the length of time they remain moored is the result of circumstances beyond their control. Visiting boat dwellers should be free to moor in Cambridge for a reasonable time both in order to maintain contact with family and friends, and to visit the city on holiday.

PROPOSED CONTRACT TERMS

The consultation document does not specify the proposed contract terms or the proposed level of charges that would be levied in the case of overstaying boats. Without this information, the consultation is meaningless and contravenes the Gunning principles in that it does not allow those consulted to give intelligent consideration and an intelligent response. Since the consultation is in breach of the Gunning principles, it is not a valid consultation and should therefore be abandoned.

The terms would need to include for example; the permitted duration of the visitor moorings; the charge payable if the boater chooses to moor in excess of the period of mooring (or chooses to return sooner than permitted); the fact that any debt recovery action will be added to the charge and are payable on an indemnity basis; and provide for a contracted right to remove a vessel and in the event of a non-payment of fees, the sale of the vessel.

If a boat is somebody's home, the Council cannot simply remove and forcibly sell it even if there are unpaid fines. Boat dwellers are entitled by virtue of Articles 6 and 8 of the

European Convention on Human Rights not to be arbitrarily deprived of their homes and to have the proportionality of depriving them of their home decided by a Court with the opportunity to defend themselves and to have legal representation. Unless the Council is proposing to intentionally violate the Article 6 and 8 rights of boat dwellers, the enforcement process would not be dissimilar to a possession claim for trespass. There is very little benefit to the Council in adopting this approach in the case of boat dwellers whom it appears these proposals are primarily directed against and who are likely to be the majority of the boaters adversely affected by the proposals.

THE EQUALITY ACT AND CHILDREN'S ACT RIGHTS OF BOAT DWELLERS

To impose a system of contract based enforcement with steep penalties has the potential to contravene the rights of boaters under the Equality Act 2010 who have protected characteristics such as age; disability; pregnancy or maternity. The Equality Act entitles those with protected characteristics not to have policies and procedures applied to them in the same way as they are applied to people who do not have those protected characteristics. This consultation is completely silent on how the Equality Act rights of boaters would be upheld by the proposed enforcement system. The Council has not provided any evidence that it has carried out an assessment of the equality impact of its proposed policy. It is required to carry out such an assessment on all of its policies before implementation. Since no evidence of an equality assessment is included in the consultation, it must be assumed that the Council is in violation of the Equality Act 2010 in this instance. Until an equality impact assessment of the proposals is carried out, the proposals should not go ahead.

In addition, local authorities have a duty under the Children's Act to consider the welfare of children when deciding new policies and procedures. To impose a system of contract based enforcement with steep penalties potentially contravenes the Children's Act if it results in debt recovery action, removal of a boat or seizure of a boat in the case of boat dwelling families with children.

SECTION 2

Visitor Moorings

QUESTION 3

Do you think the current arrangements for 'Visitor 48 Hour' moorings work?

No

QUESTION 3a

If you answered 'no' why do you think they do not work? Please state your reason(s) why

The time limit of 48 hours with no return within 7 days is unlawful, contrary to the Public Right of Navigation. In addition, it does not allow enough time for visiting boats to carry out all the activities that they may wish to do in Cambridge. This is detrimental to boaters whose reasons to visit Cambridge are to maintain contact with friends and family. The time limit and the non-return period prevents visiting boaters who are not on holiday from having the social contact with family and friends in the city that they need. Whether or not visiting boaters live on their boats, the time limit and non-return period has a detrimental effect on the economy of the city because it deters visiting boaters who are on holiday from contributing to the local economy.

QUESTION 4

Visitor mooring is currently available for 48 hours at part of Jubilee Gardens and part of Midsummer common with no return in 7 days. Is a maximum period of 48 hours for visitor moorings with no return in 7 days still the most appropriate length of stay to ensure we maximise the opportunities for boaters to visit Cambridge?

No. To have two locations that are limited to 48 hours, with non-return periods of 7 days, is completely impractical whatever the boater's reasons for visiting Cambridge. It means that boaters who wish to spend more than 96 hours in the city have to leave the city for at least 5 days before they can return. This is so impractical that it serves to discourage visitors altogether. The maximum period of 48 hours should be extended to 14 days in winter from 1st November to 31st March. The non-return period should be reduced to 48 hours in summer and remain at 7 days in winter.

QUESTION 4a

If you answered 'No' please state your reason(s) why

This would allow visiting boaters both to maintain contact with family and friends in the city and would increase the contribution of visiting boaters to the local economy. The time limit of 48 hours is not necessary in winter because the number of visitors and demand for visitor moorings is very low and does not warrant such a short time limit.

QUESTION 5

If you have any alternative proposals that the Council could consider to regulate the 48 hours moorings and to cover the costs of a civil 'contract law' enforcement, please describe it below:

The Council should bring civil possession claims for trespass in the case of boaters who moor for unreasonably long periods without any mitigating circumstances or when this done wilfully and is not due to circumstances beyond their control. Boaters who moor for long periods due to circumstances that are beyond their control should be permitted to remain until their circumstances have improved.

The reason the NBTA believes this is a better approach is because the civil contract law approach to enforcement does not have any room for discretion built into it. For a public body to fetter its discretion in this way would be unreasonable and thus unlawful. In addition, there would be safeguards built into the civil enforcement process for trespass that protect the homes of boat dwellers from arbitrary enforcement and victimisation, and take account of their individual circumstances. In conjunction with this, this the Council should investigate if and why there may be an increased demand for residential mooring in Cambridge and take steps to meet that need (as it is already doing in the case of boat dwellers moored at Riverside). This approach should apply to all riverside land owned by the Council and not just to the 48 hour visitor moorings.

SECTION 3

Only complete Section 3 if you are a boat owner/moor on the River Cam
Use of Moorings in Cambridge

QUESTION 6

Please tell us why you moor in Cambridge

QUESTION 7

Do any of the categories below apply to your reason(s) for being on the river?

- Residential
- Vacation
- Event stay
- Shopping
- Tourism
- Socialising
- Day trip
- Weekend break
- Other (please specify)

QUESTION 8

What facilities do you use at Cambridge?

- Pumping out
- Rubbish disposal
- Other
- If you answered 'other' please state the facilities used

QUESTION 9

What facilities would make boating life in Cambridge better in the future?

QUESTION 10

Would you like to see any other facilities made available to boaters in Cambridge?

- Disabled access for moorings
- Re-fuelling site
- Boatyard for repairs
- Mooring noticeboard/information point
- Additional fresh water supplies
- Additional paid toilet/shower provisions
- Additional dog fouling bins
- Large locked bin for rubbish disposal
- Anything not listed above, please specify

SECTION 4

Only complete Section 4 if you are a boat owner/moor on the River Cam
Managing the Moorings in Cambridge

QUESTION 11

How often does your boat move positions along the river?

- Daily
- Weekly
- Occasionally
- Never

SECTION 5

Enforcement Action

QUESTION 12

Do you consider the current enforcement action taken by the Council to be effective?

Yes.

QUESTION 12a

If you answered 'no' why do you think it is not effective?

QUESTION 13

What improvements would you like to see from the Council to improve its management and enforcement action?

The NBTA would like to see the Council addressing the maladministration of its Residential Mooring Licences. The NBTA has been contacted for assistance by a number of boat dwellers on the River Cam regarding these licences. The issues raised include the following. Firstly, boat dwellers have been wrongly deprived of their licences as the result of inappropriate and intrusive snooping leading to the erroneous conclusion that they were not living on their boats when in fact their boat was their only home. Secondly, that the intrusive level of surveillance of some boat dwellers was the result of victimisation and not all licence holders were subjected to such surveillance. Thirdly, that there is a significant number of licence holders who are in breach of the terms and conditions of their licence primarily by no longer being resident on their boats, and yet the Council has taken no action against them and their boats remain fully licensed to the detriment of those boat dwellers who are on the waiting list. Fourthly, that there is a total of 71 licences available but only 50 of these licences have been sold by the Council, leaving a further 20 that are available but have not been sold, also to the detriment of the boat dwellers on the waiting list. Fifthly, that the Council has provided no explanation of the above discrepancies.

The NBTA would also like to see a policy of allowing all boats to moor for reasonable temporary periods on all the riverside land owned by the Council except the areas set aside for Residential Mooring Licence holders and 48 hour Visitor Moorings.

QUESTION 14

Would you like to see a permanent 'no return' policy introduced following enforcement action being taken where a boat is evicted from City Council Moorings?

No. A permanent 'no return' policy would be unlawful because it would contravene the Public Right of Navigation.

QUESTION 15

If you have any alternative proposals that the Council could consider to regulate the 48 hours moorings and to cover the costs of a civil 'contract law' enforcement, please describe it below:

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The reason the NBTA believes this is a better approach is because the civil contract law approach to enforcement does not have any room for discretion built into it. For a public body to fetter its discretion in this way would be unreasonable and thus unlawful. In addition, there would be safeguards built into the civil enforcement process for trespass that protect the homes of boat dwellers from arbitrary enforcement and victimisation, and

take account of their individual circumstances. In conjunction with this, this the Council should investigate if and why there may be an increased demand for residential mooring in Cambridge and take steps to meet that need (as it is already doing in the case of boat dwellers moored at Riverside). This approach should apply to all riverside land owned by the Council and not just to the 48 hour visitor moorings.

SECTION 6

Feedback

How would you rate the Council on a scale of 1-10 with '1' being the lowest and '10' being the highest for managing the moorings of Cambridge?

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If you rated us '8' or below, please tell us what we could do for you to rate us '10'?

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The NBTA would like to see the Council upholding the Equality Act and Children's Act rights of boat dwellers and carrying out an equality impact assessment both of the proposals in this consultation and of its administration and decision making with regard to the Residential Mooring Licences.

The NBTA would like to see the Council developing a proper policy regarding its duties under the Equality Act, the Children's Act and Article 8 of the European Convention on Human Rights to safeguard and protect the homes of vulnerable, sick, disabled, pregnant and elderly boat dwellers and their children.

The NBTA would also like to see a policy of allowing all boats to moor for reasonable temporary periods on all the riverside land owned by the Council except the areas set aside for Residential Mooring Licence holders and 48 hour Visitor Moorings.

**National Bargee Travellers Association
February 2016**