

## NATIONAL BARGEE TRAVELLERS ASSOCIATION

### RESPONSE TO CAMBRIDGE CITY COUNCIL REVISED MOORINGS MANAGEMENT POLICY 2017-2023 CONSULTATION

#### INTRODUCTION

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.

#### GENERAL

1. In the consultation document the Council refers to its statutory duties and responsibilities. These include a “duty to consider the needs of people residing in or resorting to their district with respect to the provision of ... (b)places on inland waterways where houseboats can be moored” under Section 124 of the Housing and Planning Act 2016. It is disingenuous for the Council to state that:

“all boats in receipt of an annual licence are privately owned rather than rented, and therefore outside the boundaries of any social housing considerations, in terms of housing need”.

and

“It should therefore be clear that the residential mooring licences provided by the City Council do not form part of its social housing policy”.

2. The provision of affordable mooring licences and/or permanent moorings, for people who live on boats that they own, forms part of the statutory duties of the Council under Section 124 of the Housing and Planning Act 2016. Allocation and management of any Council mobile mooring licences, temporary visitor moorings and any fixed permanent moorings should therefore now come within the Council's social housing policy. This policy should recognise that boats provide affordable homes for people on low incomes, many of whom work in essential services such as health and education, who would otherwise be homeless because of the extreme lack of affordable housing in Cambridge, and that Cambridge would otherwise have much greater difficulty in retaining its key workers.

3. The Council should therefore develop an allocation policy for its residential mooring licences and any other moorings that responds to all of the following: providing everyone who is currently living on the river with a residential mooring licence; prioritising those in need of residential mooring licences according to the standard criteria for the allocation of social housing; compliance with the Equality Act 2010 in respect of boat dwellers with protected characteristics; fairness to those already on the waiting list and fairness to those who are moored at Riverside Dock.

4. We view the proposition to reduce the number of residential mooring licences as an

unwarranted attack on boat dwellers, which from past consultation and follow-up reports of 2016, 2014 and 2013 appears to be driven by prejudice. If the impact of boating activities on the river is the key driver of the proposal to reduce the number of residential mooring licences, the consultation should also contain proposals to reduce the impact on the river of rowing and of hired boats such as punts and holiday cruisers, in light of the fact that the number of rowers alone is around 12 times the estimated number of boat dwellers. Indeed the recent proposal to construct a rowing lake, which has not so far been implemented, demonstrates recognition by the rowing clubs that the current number of rowers has a significant adverse impact on the river. The Council has provided no rational justification for the proposals to exclude boat dwellers from Cambridge, which amount to social cleansing.

5. Boat dwellers are a small minority of river users. The Council states that the number of moored boats in the City of Cambridge is 120, which is only 12% of the boats on the river. Assuming that there is an average of 2.1 people living on each boat, this represents a population of 252 people. The consultation document misleadingly refers to the River Cam having over 1,000 boats in a 14-mile stretch of river. It does not state how many of these boats are within the City of Cambridge, nor does it state the size or type of these boats. It omits information about whether these boats are powered or unpowered; kept on land; moored off the river in marinas or moored on the river.

6. The reference to the entire 14 miles of the River Cam is also misleading because this consultation refers solely to the River Cam within the City of Cambridge. The consultation also states that in the last 20 years, rowing has increased by 148% to approximately 3,000 participants. From these figures it is clear that the greatest impact on the river within Cambridge is rowing, not moored residential boats. The proposals in the consultation are grossly disproportionate compared to the very small number of boat dwellers (an estimated 252) in Cambridge.

7. Further, the Council has not provided any explanation of what would be done with the available space on the river banks if the number of residential mooring licences was reduced. We can only conclude that the boat dwellers in question would be displaced in favour of boating activities that would generate a higher income for the Council than it may generate from residential mooring licences. This would be contrary to the statutory duties placed upon the City Council by Section 124 of the Housing and Planning Act 2016.

8. We object to the use of the terms "illegal mooring" and "illegally moored vessels" in the consultation document. This is highly misleading and offensive in its presentation of boat dwellers (and other boaters) as criminals. The law regarding the eviction of boats that are moored without the authority of the landowner on the River Cam is civil law, not criminal law. Indeed the penalty system that the Council recommended to its Community Services Scrutiny Committee on 17th March 2016 for visitor moorings on its land on the River Cam is a contract law model; the Council has never proposed seeking criminal legislation such as byelaws to regulate its visitor moorings. The inclusion of such misleading terms is very likely to have skewed the consultation responses to the detriment of boat dwellers. We require the Council to provide a public apology to boaters for referring to "illegal mooring" and "illegally moored vessels" in this consultation document.

9. The Public Right of Navigation on navigable rivers entitles all boats to moor, anchor or remain stationary temporarily in the course of navigation for a convenient time, in most circumstances without liability or payment of tolls to a land owner. This includes the right to fix temporary moorings including to the ground. This right is enjoyed by all boats

regardless of whether they have a permanent mooring or not. The Public Right of Navigation has existed since Time Immemorial and was first codified in the Magna Carta of 1215. Any system of fines or charges for overstaying that is operated without examination of individual circumstances and the reasonableness of the length of time boats have been moored is being imposed unlawfully.

10. Riverside Dock was historically used as a dock, in other words, a place where boats tie up to load and unload goods. As this use was customary over many years, it is very likely that it is also a Public Quay which the public has established rights to use due to custom and practice. To state that it is unsafe for boats to moor there and that it was not meant for mooring boats is both irrational and unjust. Boats should be able to continue to moor at Riverside Dock as they have been able to do since at least the early 20th century. See the photograph below of boats unloading at Riverside Dock, date unknown but estimated to be early 20th century.



11. It is nonsense to say that the barrier rail is to prevent vehicles from dropping into the river should an accident occur and is not designed to take the weight of moored boats. The weight of moored boats is supported by the water, not by the railings. Ropes that are tied to the railings bear only a fraction of the weight of the boat and do not take any weight when the river is not disturbed by passing boats or in flood. The lateral load of a mooring line is, in the worst case, in the order of 0.5KN, which is something that the average person can hold, even if the river is in flood. The mooring lines are typically attached to the root of the stanchions. Each stanchion is secured with 4 qty M10 or M12 studs and nuts, each capable of supporting a lateral load well in excess of 10KN (total 40KN). It is therefore a spurious argument that the railings have insufficient strength for securing mooring lines. In any case, if the barrier is designed to take the weight of vehicles, then these weights are similar to or greater than the weight of a boat when it is not supported by the water. The average narrowboat weighs 20 tons out of the water. The average heavy goods vehicle weighs more than 20 tons. If the barrier is not strong enough to prevent a heavy goods vehicle from dropping into the water then it should be strengthened in the interests of road safety otherwise the Council would risk prosecution by the Highways authority.

12. The Council should carry out works to the Riverside Dock wall that would bring the wall

up to the standard of the majority of harbour walls that are used for moorings. This would be both safe and cost effective. These works would not require construction of a pontoon and would be relatively inexpensive. This would be safer than the average tidal harbour on the coast since the River Cam is not tidal. Such improvements would mean installing access gates in the railings; ladders for access down to the water; wood or rubber buffers at gunwale height, and mooring rings on the top of the wall or at gunwale height. This should also include installing rubbish bins. Other facilities could be developed by the boating community.

## **RESPONSES TO SPECIFIC QUESTIONS**

### 1.1 No.

Mooring licence fees should be reduced to 2% of annual income, which is fairer to those on both lower and higher incomes. Mooring fees should simply cover the costs of operating the mooring service and should not contribute to the services provided by the Council to the wider Cambridge community, most of which boat dwellers do not or cannot use.

### 1.2 No.

Increasing fees would mean those on low incomes, but who are not eligible for housing benefit, could not afford to pay and would become homeless. This applies to most people on low incomes, due to the increase in thresholds.

### 1.3 Yes.

2% of annual income implemented immediately is much fairer.

### 2.1 No.

A so-called penalty charge of £100 for each 24 hour period is punitive and will have the greatest adverse impact on boat dwellers who live on their boats all year round and might need to overstay because of engine failure, pregnancy, childbirth or illness. We do not support any charges or fines for overstaying on visitor moorings but to set the level at £100 per 24 hours would be beyond the means of most boat dwellers, who are typically on incomes below the minimum wage. People whose boats are their homes have additional protection because of their rights under Article 8 of the European Convention on Human Rights, which entitles them to respect for their homes, and these proposals unlawfully fail to protect them from fines applied as a result of circumstances beyond their control or circumstances in which they enjoy rights under the Equality Act 2010 not to have enforcement procedures applied in the same way as they would be applied to those without protection from the Equality Act.

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 contract-based 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.

The consultation document does not specify the proposed contract terms that would be imposed in the case of overstaying boats, and it does not give any indication of the precise wording of the contract or of the proposed fixed penalty notice. Without that information, this consultation is meaningless in that it does not allow those consulted to give intelligent consideration and an intelligent response.

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 group that is most adversely affected by the proposals.

In any case, as stated above the Public Right of Navigation on navigable rivers entitles all boats to moor, anchor or remain stationary temporarily in the course of navigation for a convenient time, in most circumstances without liability or payment of tolls to a land owner.

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*.

3.1 No.

Families need longer or wider boats due to accommodating more people per square metre. It is unfair to penalise people who make better use of space per square metre than a single person on one shorter boat.

3.2 Yes.

4.1 No.

The community of boaters who live on their boats at Riverside Dock has been established for more than 30 years. These boat dwellers work in the City and access health services in their local area. Evicting them would cause widespread homelessness. The Council should carry out the decision it made following consultation in 2013 to regularise the moorings at Riverside Dock. This current proposal demonstrates that the council is renegeing on this policy decision whilst failing to provide any reasons, rational or otherwise, for doing so.

It is spurious and disingenuous to say that the barrier rail is to prevent vehicles from dropping into the river should an accident occur and is not designed to take the weight of moored boats. The weight of moored boats is supported by the water, not by the railings. Ropes that are tied to the railings bear only a fraction of the weight of the boat and do not take any weight when the river is not disturbed by passing boats or in flood. In any case, if the barrier is designed to take the weight of vehicles, then these weights are similar to or greater than the weight of a boat when it is not supported by the water. The average narrowboat weighs 20 tons out of the water. The average heavy goods vehicle weighs more than 20 tons. If the barrier is not strong enough to take the weight of a heavy goods vehicle then it is a safety risk and should be strengthened in the interests of road safety. The fact that the Council has raised such specious safety concerns about the weight of moored boats demonstrates that the Council is producing spurious arguments that are clearly designed to exclude boat dwellers from Cambridge, which subverts the principles of unbiased consultation.

Riverside Dock was historically used as a dock, in other words, a place where boats tie up to load and unload goods. As this use was customary over many years, it is very likely that it is also a Public Quay which the public has established rights to use due to custom and practice. To state that it is unsafe for boats to moor there and that it was not meant for mooring boats is both irrational and unjust. Boats should be able to continue to moor at Riverside Dock as they have been able to do since at least the early 20th century.

4.2 No.

Those moored at Riverside Dock should be issued with mooring licences and allowed either to stay at Riverside if they wish or move to other moorings on the river. Also, some boats without moorings are not moored at Riverside and offering moorings to some but not all, is unfair.

4.3 No.

Riverside Dock was bought by the Council using a Compulsory Purchase Order. This means that the Cam Conservators do not have the legal power to impose a 'no mooring' zone there. The forced removal of boat dwellers would cause widespread homelessness and as such would bring the Council into disrepute.

4.4 Yes.

As stated above, the Council should carry out works to the Riverside Dock wall that would bring the wall up to the standard of the majority of harbour walls that are used for moorings. This would not require construction of a pontoon, would not impede upon the width of the river and would be relatively inexpensive. This would be safer than the average tidal harbour on the coast since the River Cam is not tidal. Such improvements would mean installing access gates in the railings; ladders for access down to the water;

wood or rubber buffers at gunwale height, and mooring rings either on the top of the wall or at gunwale height.

Riverside Dock has the potential to become an example of sustainable social housing by the investment and improvement of facilities such as bins, a water tap, electricity, or laundry facilities, in consultation with those moored there and this should be pursued.

The Council should issue residential mooring licenses to all boat dwellers anywhere on the Cam, not just those moored at Riverside Dock. The system of zones for residential mooring licences should be changed so that licence holders can moor anywhere at Riverside Dock, Midsummer Common, Jesus Green, Stourbridge Common or anywhere else. The rest of the river bank should be opened up for use by residential mooring licence holders. No residential mooring licences should be issued to anyone on the waiting list until all boat dwellers who are currently living on the river have been granted licences.

5.1 No.

Whilst we agree that any statutory or public function must be exercised transparently and consistently, enforcement would not be necessary if all boat dwellers currently on the river with no mooring licence were issued with one. "Voluntary compliance with regulations" is a contradiction in terms. If regulations are lawful, compliance is obligatory. To say that compliance is voluntary implies that the regulations are not lawful and have no force of law, in which case the enforcement is unlawful and boaters have no obligation to comply with the regulations.

6.1 No.

Many more residential mooring licences should be created in order to meet the need for them. There are plenty of spaces for moorings and many empty moorings, including on Stourbridge Common, which should be opened up to mooring licence holders. Everyone who is currently living on the river should be granted a residential mooring licence.

6.2 No.

Much more of the river bank needs to be allocated for mooring, to meet the needs of boat dwellers without anywhere to moor their boats. Mooring licences should be issued to all who are currently living on the river. The system of zones for residential mooring licences should be changed so that licence holders can moor anywhere at Riverside Dock, Midsummer Common, Jesus Green, Stourbridge Common or anywhere else. Boat dwellers must not be displaced in order to open up the river bank for more lucrative activities.

6.3 No.

Mooring licences should be permanent and issued to all who are currently living on the river.

7.1 No.

Winter mooring licences should not be considered until all who have been waiting on the river for a mooring licence have been issued with one.

8.1 No.

Mooring space should be opened up to meet the needs of boat dwellers in the context of Section 124 of the Housing and Planning Act 2016.

8.2 No.

All those who are currently living on the river should be issued with a residential mooring licence that allows them to moor anywhere at Riverside Dock, Midsummer Common, Jesus Green, Stourbridge Common or anywhere else.

8.3 No.

All those who are currently living on the river should be issued with a residential mooring licence for as long as they need it that allows them to moor anywhere at Riverside Dock, Midsummer Common, Jesus Green, Stourbridge Common or anywhere else.

9. Please see the general points we have raised above for the additional items we propose regarding the River Moorings Policy. In addition we propose that all those who are currently living on the river should be issued with a residential mooring licence for as long as they need it, that allows them to moor anywhere at Riverside Dock, Midsummer Common, Jesus Green, Stourbridge Common or anywhere else.

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