

NATIONAL BARGEE TRAVELLERS ASSOCIATION

RESPONSE TO NORWICH CITY COUNCIL DRAFT STRATEGY FOR THE RIVER WENSUM

1. 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.
2. The NBTA welcomes the statement in paragraph 5.17 of the Draft Strategy for the River Wensum regarding the provision of residential moorings; the City Council's acknowledgement of the benefits of residential moorings and their contribution to the provision of affordable housing, and the Council's commitment to influencing the emerging Broads Local Plan to allow for residential moorings in locations other than marinas, boatyards and basins.
3. However, 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.
4. Any removal of boats from the river bank, especially boats that are lived on, that is operated without examination of individual circumstances and the reasonableness of the length of time that the boats have been moored, is being imposed unlawfully.
5. In addition, when a boat is lived on, the rights of the boat dweller under Articles 6 and 8 or the European Convention on Human Rights (ECHR) entitle them to have to proportionality of the removal of their home examined by a Court and to due process and a fair trial, in other words the opportunity to defend themselves against the removal of their home. See *Kay and Others v The United Kingdom* [2010] Application 37341 / 06 paragraph 68 and *Canal & River Trust v Jones* [2017] EWCA Civ 135.
6. The NBTA is extremely concerned that the Draft Strategy for the River Wensum does not acknowledge the rights of Bargee Travellers to live on boats without a permanent mooring nor make provision for their rights and needs for temporary moorings and access to facilities such as potable water, sewage disposal and refuse disposal. We are dismayed by the proposals in paragraphs 5.19 and 5.21 for enforcement against so-called "unauthorised" mooring and /or overstaying at certain locations. These proposals do not take into account the right to moor temporarily in the course of navigation for a reasonable time, nor do they take into account the welfare needs of boat dweller or their rights under the Equality Act 2010.
7. The Equality Act 2010 entitles those with protected characteristics such as age; disability; pregnancy or maternity 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 proposals. The City Council has not provided any evidence that it has carried out an assessment of the equality impact of its proposals. 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 City 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.

8.

In addition, local authorities have a duty under the Children's Act to consider the welfare of children when deciding new policies and procedures. Proposals for enforcement against so-called "unauthorised" mooring 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 / Bargee Traveller families with children.

9. The NBTA is also very concerned about the conflation in paragraphs 5.19 and 5.21 of anti-social behaviour with "unauthorised mooring" by vessels and boat users in the river. Bargee Travellers are, without any supporting evidence, frequently and unjustly blamed for anti-social behaviour in the vicinity of waterways, when the anti-social behaviour is actually being perpetrated by other waterway users. This element of the consultation buys into and serves to perpetuate prejudice against Bargee Travellers, contrary to the City Council's obligations under the Public Sector Equality Duty. Allegations of anti-social behaviour should not be made unless they are supported by incontrovertible evidence.

10. The Draft Strategy for the River Wensum should include the provision of transit moorings and associated potable water, sewage disposal and refuse disposal facilities for Bargee Travellers. We recommend that transit moorings be available in normal river conditions for periods of at least six weeks, with longer stays in flood and adverse weather conditions and in circumstances where the welfare of individual Bargee Travellers (such as illness, injury, or mechanical breakdown) requires a longer stay or their Equality Act rights entitle them not to have enforcement procedures applied to them in the same way as to people without protected characteristics, for example pregnancy and disability. Stay times at transit moorings should not be enforced by draconian methods such as "no return within" time limits; so-called civil contract based enforcement; penalty charges; civil or criminal fines or by the removal of lived-on boats making the occupants homeless. The NBTA is opposed to all evictions of boat dwellers.

11. Transit moorings should be designated for use by boat dwellers without a permanent mooring and should be located in many of the locations identified for additional visitor moorings on a shared basis where part of the length should be made into transit moorings. Visitor moorings should also have longer stay times in winter to accommodate Bargee Travellers. Potable water, sewage disposal and rubbish disposal facilities should be located at these sites. Other transit mooring locations should be located in the areas identified in Sections 6 and 7 of the consultation document.

12. Any development of land in the vicinity of the river should have a covenant and / or Section 106 agreement included that serves to protect the rights of all boaters to use the river banks for mooring and for the provision by property developers of potable water, sewage disposal and refuse disposal facilities for all boaters. All too frequently, riverside property developments are accompanied by the persecution and clearance of boat dwellers, the removal of mooring equipment, the closure of boaters' facilities and the

clearance and closure of boating businesses such as boat builders, repair yards and dry docks. The Draft Strategy for the River Wensum will undermine its stated aims of addressing social deprivation, health inequalities and deprivation if the effect of the strategy is to gentrify the riverside and carry out the social cleansing of Bargee Travellers / boat dwellers from the area. Similarly, if the unintended consequence of the draft strategy is the clearance of Bargee Travellers / boat dwellers, this will undermine the stated aim in paragraph 6.40 of ensuring that new development is sensitive to its riverside setting and will enhance the setting of the river.

13. Section 124 of the Housing and Planning Act 2016 states that local housing authorities in England must, in their periodical reviews of housing need, consider the needs of people "residing in or resorting to their district with respect to the provision of... places on inland waterways where houseboats can be moored". Norwich City Council is a local housing authority and as such is required by Section 124 of the Housing and Planning Act 2016 and Section 8 of the Housing Act 1985 to assess and meet the housing needs of all boat dwellers, including Bargee Travellers. See <http://www.legislation.gov.uk/ukpga/2016/22/contents> for the full text.

14. On 11th March 2016 the Secretary of State for Communities (DCLG) issued guidance to go alongside Section 124 of the 2016 Housing and Planning Act. On 11th November 2017 Helen Higgins for DCLG stated in writing to the NBTA that: "... the published draft guidance [of 11-3-2016 is] the current version" and on 21-6-2017 she confirmed this on behalf of the Director General. The Guidance therefore has effect.

15. This means that the Draft Strategy for the River Wensum must include provisions for Bargee Travellers / boat dwellers without a permanent mooring, as well as provisions for residential moorings.

16. Proposals to improve cycling access must not make the riverside dangerous for other users such as children on foot, walkers and boaters. In many areas of the waterways, where the surface of towpaths has been upgraded to facilitate greater use of cycles, it has made the towpath dangerous and unusable for pedestrians due to the high speed of cycling for which there appears to be no effective method of enforcement that the relevant authorities have the political will to use. Notices and "education" aimed at cyclists has been proven not to work. The attractiveness of Sustrans funding should not obscure local authorities' duty of care to pedestrians including boaters.

Appendix 1 NBTA Briefing on the Housing and Planning Act 2016.

**BARGEE TRAVELLER ACCOMMODATION ASSESSMENTS ("BTAAs")
PROPER APPLICATION WITHIN SCOPE OF s.8(3) HOUSING ACT 1985
PREPARED BY
THE NATIONAL BARGEE TRAVELLERS ASSOCIATION ("NBTA")
22nd AUGUST 2017**

1. s.8(3) of the Housing Act 1985 [1] was amended (by s.124(1) of the Housing and Planning Act 2016 [2] (the "2016 Act")) to include an obligation to conduct accommodation needs assessments of boat dwellers ("Bargee Travellers" or "BTs").

2. s.124 of the 2016 Act came into force on 12-7-2016, 2 months after Royal Assent (12-5-2016) pursuant to s.216(2)(a).

3. s.225 Housing Act 2004 [3] (the "2004 Act ") placed an obligation on Local Housing Authorities ("LHAs") to conduct Gypsy and Traveller Accommodation Assessments ("GTAAs"). s.225 of the 2004 Act was repealed by s.124(2) of the 2016 Act.

4. Paragraph 159 of the National Planning Policy Framework [4] obligates the LHAs to conduct a Strategic Housing Market Assessment requirement ("SHMA"). In order to properly conduct a SHMA a LHA is obligated to inform itself.

5. In order to be informed, a LHA must conduct what is materially a GTAA. Because of the repeal of s.225 of the 2004 Act the NBTA now refers to this process of gathering information, in order to be informed, as a "new-GTAA" or "n-GTAA".

6. In order to be informed, pursuant to s.8(3)(c) of the 85 Act a LHA must also conduct an accommodation needs assessment of BTs. The NBTA now refers to such assessments as a Bargee Traveller Accommodation Assessments, "BTAAs").

7. On 11-3-2016 the Secretary of State for Communities ("DCLG") issued guidance (the "Guidance ") [5] to go alongside the 2016 Act. The Guidance remains marked "draft". The Guidance contains (in the view of the NBTA) several defects and the NBTA addressed these defects in writing to DCLG in March 2016. However DCLG elected not to update the Guidance. The current version therefore remains that of 11-3-2016.

8. Helen Higgins for DCLG stated in writing to the NBTA on 7-11-2016 that: "... the published draft guidance [of 11-3-2016 is] the current version" and on 21-6-2017 she confirmed this on behalf of the Director General. The Guidance therefore has effect.

9. The Guidance requires LHAs to consult the NBTA in the conducting of BTAAs. The NBTA is accordingly available and at the disposal of LHAs and their contractors in this regard.

10. During 2016 and 2017 several LHAs and their contractors approached the NBTA for its detailed guidance in the conducting of BTAAs and the NBTA provided this. The NBTA understands that in the majority of cases the LHA has conducted its SHMA (thus incorporating BTAAs) in accordance with the guidance of the NBTA. In the instances where the LHA has not followed the guidance of the NBTA the NBTA has brought this to the attention of DCLG for appropriate intervention.

1 <http://www.legislation.gov.uk/ukpga/1985/68/contents>

2 <http://www.legislation.gov.uk/ukpga/2016/22/contents>

3 <http://www.legislation.gov.uk/ukpga/2004/34/contents>

4 <https://www.gov.uk/guidance/national-planning-policy-framework>

5 <https://www.gov.uk/government/publications/review-of-housing-needs-for-caravans-and-houseboats-draft-guidance>