UPDATING BW'S ONLINE MOORING POLICY (ENGLAND & WALES) 2009

PRE-CONSULTATION SUBMISSION

NATIONAL BARGEE TRAVELLERS ASSOCIATION

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1. PREAMBLE

1.1 Introduction

This paper represents the National Bargee Traveller's Association ("NBTA") response to the preliminary pre-consultation by BW in relation to the paper "Updating BW's Online Mooring Policy (England & Wales) 2009" closing on 22nd April 2009. This was first made available to the NBTA after the close of business on the 20th April 2009 and so the NBTA's response is only as comprehensive as time permits.

The NBTA is a new association established to represent the interests of Bargee Travellers on inland UK waters, and to foster links with other international organisations of the same disposition. The NBTA was established because it became apparent that although Traveller interests in general are represented by a number of support organisations there is no specific group aligned to the unusual needs surrounding Bargee Travellers.

Further, while travellers in general have their interests enshrined in policy, for example in the form of Circular 01/06 from the Department for Communities, there is no policy that covers the interests of Bargee Travellers (who are excluded from Circular 01/06) and thus a violation of Art. 14 ECHR is manifest. The NBTA sees as one of its mandates a need to work through this policy vacuum with the appropriate Departments and Agencies.

Circular 01/06 may be found here:
www.communities.gov.uk/publications/planningandbuilding/circulargypsytraveller

For the avoidance of doubt, Circular 01/06 defines travellers as:

> *"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such."*

The exclusion of travelling show people is because Circular 01/06 relates to planning, the needs of travelling show people are characterised by "wintering over at a fixed location" and during this period they need to store their showground equipment. Special provisions are therefore arranged for travelling show people.

The DCLG document "Definition of the term 'gypsies and travellers' for the purposes of the Housing Act 2004" which may be found at
www.communities.gov.uk/archived/publications/housing/definition

defines travellers for the purposes of s.225 of the Housing Act 2004 as

> *(a) persons with a cultural tradition of nomadism or of living in a caravan; and*
> *(b) all other persons of a nomadic habit of life, whatever their race or origin, including:*
> *(i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and*

(ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).

This in essence therefore places obligations on local authorities to provide sites for travellers who live in caravans. When this is transposed to relate to Bargee Travellers needs, this means "moorings". In the case of riverbank under the jurisdiction of the EA but where a local authority holds riparian rights, notwithstanding the fact that the EA is a statutory consultee, the LA is in a position to uphold its obligations.

However in the case of canal bank the land ownership is (usually) held by BW and therefore this obligation must transfer to BW in its capacity as statutory consultee. Put another way, an obligation falls on BW to not obstruct the efforts of the LA in the upholding of the obligations on the LA to provide sites (in this instance moorings).

The converse also applies: if BW operates a policy that is opposed to the principle of mooring provision for Bargee Travellers then this can be argued under scrutiny of JR to be falling foul of s.225 of the Act.

If BW successfully argued that it has no secondary obligation under s.225 then in any event such a policy must fall foul of "respect for home" and thus constitute a violation of Art. 8 ECHR. The NBTA draws the attention of BW to the case of Connors v UK (Application 66746/01) [2004] 16 BHRC 639 in which it was determined that a travellers caravan is his home, therefore Art 8 ECHR is engaged in such matters and subsequently violated if an organ of a contracting state does not hold respect for that persons home. Such a case would clearly be relied on in an equivalent case relating to a Bargee Traveller's boat. It follows that BW attracts obligations in any event in relation to supporting a LA in its own exercise of its duty to provide sites.

Given that Travellers in general enjoy not only certain rights enshrined in policy but also certain statutory rights in particular in relation to where and how they may "pitch up", it follows that the policy vacuum in relation to Bargee Travellers, once filled, may very well grant certain statutory rights and policy-related protection.

DCLG has stated that in the formulation of its policy it must engage in consultation with key stakeholders including, in the private sector, associations such as the NBTA and in the public sector organisations such as BW, the EA and the other 29 members of AINA. Given the statutory and quasi-statutory product of the DCLG consultation it follows that the consultation engaged in by BW may be circumvented or, at least, be premature.

8. SPECIFIC RESPONSES

8.1 Suggested principles (page 1)

Question 1: *Do you agree with these principles?*

BW is a quasi-public sector body. Its public purpose is to manage the waterways under its jurisdiction. To do so it has a statutory obligation to formulate policies that deliver on its public purpose. As such principles 1 - 3 are somewhat superfluous.

Principle 4 is simplistic. The waterways have acquired a spectrum of uses of which navigation is one but only one purpose. Other purposes include for example

- Bank-side recreation
- Provision of quasi-cycle lanes (important in the delivery of the sustainability policies of Department for Energy)
- Natural habitat
- Locations for the generation of renewable energy
- A return to freight-carrying transport (potentially in the future)
- Water-based recreation including holidaymaking
- Accommodation
- Vehicle for the engagement in cultural heritage (we invented canals after all)

The fact that the original purpose of the waterways has ceased to apply (transport of freight, although this might return in the future) does not diminish the purpose of navigation but this does not mean “navigation at the expense of the other multitudinous purposes”.

Indeed in a context where the thrust of this consultation is to pick over and redesign policy in relation to moorings this, it has to be said, is the product of the general principle that “navigation for holidaymakers” appears to carry a superior priority to that of “water-based home driven by economic deprivation”. A fundamental ethical issue therefore emerges. The NBTA clearly has an interest in seeing that the latter is not dismissed.

There is no doubt that the use of the waterways has increased in the past few quarters. However the general opinion “on the ground” is that this is driven by the two conflicting economic effects of (1) a constant ratcheting up of terrestrial house prices, more notable since 2006 but commencing in 2000-2001 and (2) the growing slump commencing in the summer of 2007.

The data presented in the graph on page 2 of the consultation document does imply growth in overall non-business use. However data available to the NBTA suggests that this arises from “people moving into a boat because they can no longer afford a house”. The BW data must also be set in a 2-decade and a 2-century context where there are many fewer boats on the system now than in the heyday of the canals, and fewer boats now than in the late 1970s and early 1980s (source EA).

Looking at the data in the graph, it is apparent that the rate of change was greatest between 2000 and 2001 (5%, coinciding with the small recession following the "dot.com bubble burst" and 2005-2006 (7.7%, but prior to the slump that started in 2007). The two data parameters that are missing but which is absolutely necessary in order to conduct this consultation "properly" are (1) the division between "holidaymakers" and "live aboards" and (2) the 2008/2009 licensing data. It would be wholly inappropriate to conduct this consultation in this form without those two elements of data being available.

For the purpose of this consultation however the primary topics of debate are the conflicting interests between those of the "holidaymakers" and those of the "live aboards". However given that the interests of the "live aboards" are also enshrined in international and national human rights legislation (for an absolutely fundamental reason) these interests are not simply assessed by the application of "fair play" or "appropriate mix". The NBTA therefore does not agree with the principle laid out in principle number 5.

We must remind ourselves that recreational boating is a luxury: the ownership of a boat (especially given the premium associated with mooring fees) makes the activity something for those with surplus income. The practice of "live aboard" is something that follows from economic deprivation.

Although certain benefits arise from live-aboard (scenery, engagement in a low carbon footprint, independence, changing scenery) there are also substantial disadvantages verging on deprivation (cold in winter, absence of mains water or sewerage, disconnection from "static" community, cramped living accommodation and other welfare-related privations including poor or non-provision of education and medical services). This catalogue is not in question and material is abundantly available (not least of which in Circular 01/06) that studies these concepts.

It follows therefore that "holidaymakers" and "live aboards" form two distinct demographic groups with markedly different economic means. To lump these two groups together in a manner that is quite arbitrary is not just grossly simplistic. It is demeaning to the extent of amounting to an Art. 8 violation. Put another way, an implementation of policy that forces "live aboards" to compete economically with "holidaymakers" in a manner that is in essence grossly unfairly pitched in favour of the holidaymaker demonstrates no respect for the fact that the "live aboard" relies on the boat as his home.

It is for this reason that the BW mooring auction system is regarded by the NBTA as grossly draconian. While it addresses solely non-residential moorings (ie catering for the "holidaymakers" demographic") it provides a convenient way of addressing the issues of mooring provision although it relies wholly on "market forces". The government in power, supposedly of "labour" persuasion, however does not rely solely on "market forces" and therefore it has to be said that a "market forces" system instigated by BW has been executed without a mandate and that in itself is objectionable.

However when residential moorings are lumped into the same system (noting that the ratio of residential to non-residential mooring availability is pitiful) pitches the two disparate demographics together and the violation crystallises.

By way of analogy, with the growing values in the property market during the early 1990s legislation was eventually enacted (by way of the Housing Corporation) to bring to bear housing associations in an exactly equivalent context. BW appears to be some 15 years behind the times and “paddling against the flow” in this respect.

While the general principles of mooring types in relation to use by “holidaymakers” is accepted, the effect of lumping the “live aboard” economic demographic group in with that of “holidaymaker” in relation to the mooring market use is a defective approach and the NBTA does not accept the principle laid out in Principle 6.

The effect on the part of BW in failing to recognise the disparity between the economic demographic groupings of “holidaymakers” and “live aboards” together with insufficient provision of “residential-only” moorings has led to gross under provision to meet the needs of “live aboards”. In turn this has led to the practise of continuous cruisers “bridge hopping”, something whose sole purpose is to defeat the efforts of enforcement in a context of under provision. The NBTA argues that the principle of “deprivation” of provision of a resource by a public sector body on the one hand allied to rigorous enforcement for non-compliance on the other is grossly draconian, something that was in general outlawed may years ago and is in principle scrutinisable by judicial review.

While the NBTA does not discount the responsibility of BW, in the execution of its public purpose, in engaging in enforcement action. However there is absolutely no question that the intelligence available to the NBTA suggests that this engagement is so overzealous and draconian as to amount to a disgrace. The manner in which the Jericho Community Boatyard in Oxford was managed by BW is a prime case in point and BW became an international laughing stock. It is not often that a national and “niche market” political issue is translated into a Hollywood blockbuster. The NBTA responds to the question of whether Principle 7 is well cast by stating “BW has an obligation to revaluate its policy from the top down”.

The NBTA reminds BW that the maintenance of the canal system under BWs jurisdiction forms part of BWs public purpose. How the budget is cast by BW is a matter for BW, remembering that BW is open to public scrutiny. However the NBTA can find no mandate that states that BW is entitled to translate “a need to fund maintenance work” into “a right to charge excessive fees for mooring”. This is especially the case in a context where BW is entitled to derive a revenue stream from licensing but having granted licensing, a boat user should enjoy an unfettered right to roam the canal system. To charge excessively (or even at all) for moorings constitutes a “surcharge by the back door” and in principle is therefore unlawful as BW has no mandate to execute such a policy. The NBTA therefore holds the view that Principle 8 is defective.

Question 2: *How would you change them?*

Principles 1 – 3: general mission statement that should apply in any event noting that BWs public purpose is embodied in this in any event.

Principle 4: Waterways are for a range of purposes; mooring provision must realistically and properly engage the competing needs of both “holidaymakers” and “live aboards” not only in a proportionate manner but reflecting the Art. 8 ECHR obligations on BW in relation to “live aboards”.

Principle 5: Clear differentiation must be established between the needs of “holidaymakers” and “live aboards” and meeting this need must be properly executed, in a manner that one of the demographic groupings does not encroach on the other. It would be appropriate for three licence types to be introduced: (1) “holidaymaker” (2) “live aboard” and (3) “continuous cruiser”; a matrix of different mooring types ((a) residential, (b) non-residential 24-hour (c) non-residential 2-week and other categories) should be drawn up and access rights to different mooring types be established based on licence type.

Principle 6: Competition between “holidaymaker” mooring providers is appropriate. The promotion of free market competition between “live aboard” users is inappropriate tending towards draconian and, in the extreme, constitutes a manifestation of a violation of Art. 8 ECHR.

Principle 7: Enforcement action will be proportionate, measured and executed giving the maximum opportunity for compliance on the part of the boat user. In particular the practise of removing a non-compliant vessel from the water (and confiscating it) shall cease on the basis that such a practise does indeed constitute a violation of Art. 8 ECHR and is therefore challengeable before the ECHR.

Principle 8: Before BW seeks to achieve an active revenue stream from mooring fees in addition to licence fees it must consider whether it has a mandate to do so. This includes the effect of instigating an auction system for use of non-residential moorings. In particular the effect of charging an excessive tariff (or indeed permitting an auction to operate) for residential moorings must be re-evaluated.

8.2 Summary of Challenges (page 2)

Question 3: *Do you agree that these are the most significant challenges?*

Avoiding unacceptable densities of long term moored boats in busy areas	No. Busy areas are clearly established (precedent) as "busy areas" and it is not the role of BW to purge these areas.
Avoiding unacceptable densities of overstayers in busy areas	"Overstayers" is the effect, not the cause, of defective policy and therefore the NBTA responds by saying "attend to the policy first"
Maintaining availability of casual moorings for cruising boaters	Yes
Enforcing compliance with continuous cruiser rules	"Continuous cruiser" appear t be defective and challengeable. Again, this is the effect, not the cause, of defective policy and therefore the NBTA responds by saying "attend to the policy first"
Meeting demand for residential moorings	Yes
Addressing residential use at long-term moorings without the relevant planning permission	BW has no jurisdiction. This is therefore irrelevant.

Question 4: *How would you change the list?*

(1) Formally distinguishing between the economic demographic differences between "holidaymakers" and "live aboards" and amend policy in relation to "continuous cruisers"
(2) Formally recognise obligations in relation to Art. 8 ECHR.
(3) Foster provision of sufficient mooring resource
(4) Foster provision of public facilities (water, waste, etc) commensurate with a revenue-earning authority

8.3 Densities of online moorings (section 2)

Question 5: *Do you agree with our analysis of this issue? (2.1)*

NBTA does not accept the principle that boaters should not moor online. The heritage of narrowboat use is to moor in this way. Therefore boat users who are objecting are perhaps in the wrong place, engaging in the wrong activity.

This principle also applies to "terrestrial" uses of the canal (walkers, cyclists, etc). "The boats were there first". To suggest that the canals should be "cleared up of moorers" is nonsensical.

While the general principle of marina mooring is sound, this more closely correlates to “holidaymaker” use. If online moorings are therefore removed in a 1:10 ratio then this exacerbates, not improves, the position of “live aboards”. There are some members of the NBTA who decry the possibility of living in a marina. Drawing a corollary with the needs of Travellers, there is evidence of unlawfulness of forcing travellers into “bricks and mortar” housing for reasons of “inappropriateness” in meeting their housing needs. The same may be said for forcing “continuous cruisers” into offline marinas.

Question 6: *What comments do you have on the policies? (2.2)*

(a) The NBTA does not accept the principle of dissatisfaction with online moorings, as stated above.
(b) Ongoing investment in offline mooring is accepted and actively supported – for those for which offline mooring is appropriate. However this must be matched on a proportionate basis with meeting the needs of “continuous cruisers” and “live aboards” who may be more closely correlated with a need for online mooring.
(c) The NBTA believes that this policy is defective
(d) The NBTA has addressed the issue of revenue in paragraph 8.1, Question 2, Principle 8 above
(e) Accepted providing that “interested parties” includes all interest groups and is not biased to one particular sector, especially if that sector holds a vested interest. The NBTA reminds BW of its obligation to be impartial proportionate and non-prejudicial.

Question 7: *What comments to you have on the implementation options? (2.3)*

In relation to non-residential moorings this approach is acceptable. However in relation to residential it smacks of engagement of the Town and Country Planning Act without a mandate.

NBTA cautions BW in the engagement of the construction of policy that is directly attacking the meeting of a housing need. Taken to an extreme (and in the particular case where Bargee Travellers can demonstrate their ethnicity) this constitutes ethnic cleansing and is unlawful.

Question 8: *Are there ways in which volunteers could help with this challenge?*

Volunteers can always assist the public sector. A guaranteed way of repulsing volunteers is to execute on policies that are disproportionate, draconian and oppressive. On the Thames the river is divided into sectors and “River User Groups” debate issues and policies on a voluntary basis and exchange this information with the EA. An equivalent system would be well grounded under BW jurisdiction.

8.4 Availability of casual moorings for cruising boaters (section 3)

Question 9: *Do you agree with our analysis of this issue? (3.1)*

Overstaying is a symptom of insufficient provision of residential moorings. Deployment of s.8(5) of the Act in the removal (and confiscation) of a boat used as a home falls foul of Art. 8 ECHR. If due process is not followed then Art 14 ECHR is also engaged and violated. Each case must obviously be dealt with on its own merits. A towpath devoid of other boats is clearly not causing an obstruction to a would-be new moorer, for example.

Question 10: *What comments do you have on the policies? (3.2)*

The use of "short stop" moorings has been used on the Thames for many years. In addition the principle of "not mooring in a location designated for operations" (ie near locks) is a matter of common sense. The issue is one of proportionality. The NBTA invites BW to declare (as opposed to requisitioning this information under s.1 Freedom of Information Act) the following data:

- Total bank length (in m) under the jurisdiction of BW
- Bank length not suitable for mooring at all
- Bank length not suitable for mooring but which has previously been used for mooring (ie where maintenance would return it to mooring)
- Length of bank covered by locks or lock approaches
- Length of bank under private ownership and on which no third party mooring is known to be offered
- Length of bank under private ownership and on which mooring is not known to be offered
- Length of bank designated as residential mooring
- Length of bank designated as non-residential mooring
- Length of bank designated as "BW visitor mooring"
- Length of bank of other designation

With this data is it possible to make a judgement in relation to the proportionality aspect of the draft policy.

In relation to winter/summer use, there is more than ample evidence to indicate that the use of ad-hoc moorings (ie towpath) in winter months follows a completely different usage characteristic to that in summer. It follows that a time span limit could be rationally applied to "visitor moorings" applying during the summer months (eg 1st May – 30th September).

Question 11: *What comments to you have on the implementation options (3.3 and appendix 1)*

NBTA is surprised that after over 200 years of operation of the canal network the usage data of moorings is not available.

In relation to the policies laid out in Appendix 1:

Definition of "Continuous Cruising"

NBTA rejects the policy relating to continuous cruising. Referring to the Cambridge dictionary, Navigation is defined as follows:

"Navigation: noun [U] the act of directing a ship … from one place to another"

There is no rational implication from the Act that the Regulation stating "will be … used for navigation throughout the period of [the licence]" may be inferred as "engaging in a cruise", or "throughout the network" that retains any semblance of passing the "Wednesbury Reasonableness" test. It follows that BW has exceeded its authority (and is specifically being over zealous) is applying such a policy. In turn any discussion in relation to the pros and cons of "bridge hopping" is misplaced. The NBTA therefore responds by stating "out of BWs jurisdiction".

(a) Communication

No public sector body has a mandate to be threatening. It is a matter of regret that BW appears to have acquired such a reputation and, the NBTA argues, does have a mandate to remediate this reputation and, in the opinion of the NBTA, go to some lengths to do so. It is a matter of regret that the thrust and tenor of this pre-consultation document, as a general observation, heads in the opposite direction. Indeed the NBTA has been shocked by the overt oppression manifest in this document when specifically overlaid on the genuine housing needs of "live aboards"

(b) Enforcement

On the assumption that Bargee Travellers meet the definition of "traveller" laid down in Circular 01/06 (transposed to relation to floating dwellings rather than wheeled caravans) and thus attract statutory rights, a range of measures of protection are instantly attracted to our demographic grouping. The general principles are outlined in Circular 01/06. Regrettably the general thrust of paragraph Appendix 1(b) is so grossly diametrically opposed to these principles as to command a need for review at the very least.

The NBTA regards the statement made by BW of "… the [offending live aboard] boaters avoid paying for a home mooring and are living "cheaply" " as highly offensive and inappropriate in the extreme. The basis for this assertion is laid out in the response to Paragraph 8.1 Question 1 above. If ever there was a case for an independent review of the policy-making process of a quasi-public sector organisation this is it.

(c) Short Term Mooring Permits

In a situation where a premium is charged for mooring it is clearly an operational matter in relation to how the fee is charged. To do so on-line, by credit card, and so on form the essence of modern society and clearly should be engaged. Following the general government obligation for electronic communication and financial transactions suggests that this is appropriate treatment.

A fee of £40 is massively disproportionate and smacks of either gross profiteering or simply pricing the site away from mooring. BW has no mandate for either activity. If the site is not to be used for mooring then BW has legislative powers to state as such. If a site is available for mooring then establishing such a gross tariff (and thus favour the affluent) is noting other than grossly divisive.

In general the use of local wardens to take payment is generally reasonable proactive. However it is also reminiscent of motor car parking habit control with the use of traffic wardens. There is no question of the hatred levied at traffic wardens. There is also no question of the liberalisation of policy in relation to the use of traffic wardens and deployment of enforcement powers. This pre-consultation document speaks of draconianism and oppression and not liberalisation and for this reason alone commands a fundamental policy review within the confines of BW, by means of properly conducted consultation (in accordance with the guidelines for publicly conducted consultation).

(d) Roving Mooring Permit

The specification of the "Roving Mooring Permit" meets that of what "Continuous Cruising" should mean if an interpretation of "Continuous Cruising" genuinely reflects both the cultural heritage of Bargee Travellers and the guidance laid down in Circular 01/06 (transposed to a water context). It is unconscionable therefore for BW to suggest that a premium over and above the licence fee should be entertained to permit "continuous cruisers" to engage in the activity constituting their demographic.

Further, to police the use of a Roving Mooring Permit in the way described in the pre-consultation document smacks of surveillance in a manner that is oppressive. Most of all BW has no mandate to act as a quasi-police enforcement organisation accepting that it does have a role to patrol with the view of supporting the day-to-day safety related needs of canal system users.

The concept of a boat user having a home mooring but rarely visiting that mooring is also grossly oppressive. If someone is using their boat in a manner than amounts to "continuous cruising" yet also has a home mooring then they are to all intents and purposes a genuine Bargee Traveller that happens to have a home mooring (in other words the existence of a home mooring may be either completely irrelevant or merely a device in relation to the prevailing licensing regime operated by BW). As such for BW to levy a profound criticism of "unfairness" on such a person is in itself draconian. For the avoidance of doubt, Bargee Travellers have a right to roam and the measures in debate in this BW pre-consultation document seek to stifle that right. The NBTA reminds BW of the effect of prejudice against an ethnic minority.

(e) Annual Mooring Supplement

The NBTA has no response to make given the assertion that the definition of "continuous cruiser" and the policies that follow from that are defective.

Question 12: *Are there ways in which volunteers could help with this challenge?*

The use of volunteer effort to provide a mapping activity would be worthwhile. However the NBTA draws the attention of BW to its comments in Paragraph 8.3 Question 8 above.

8.5 Non-compliant continuous cruisers (section 4)

Question 13: *Do you agree with our analysis of this issue? (4.1 and 4.2)*

The NBTA addresses this point in Paragraph 8.4 Question 11 above.

The NBTA asserts that BW should support with evidence the statement made by BW that overstayers at casual moorings cause congestion. However in general this point is addressed above in Paragraph 8.2 Question 3 above.

The NBTA also takes issue with the assertion that boaters with home moorings consider that it is unfair of "continuous cruisers" to use casual moorings. One of the general principles of our society is that those who are disadvantaged are supported by society as a whole and their dignity preserved. Such a statement by BW is in essence endorsing gross prejudice. Linked with the assertion of the demographic identity of Bargee Travellers takes the BW into difficult territory. The NBTA asserts that BW has no business to reproduce such a statement embodying such xenophobia let alone consider absorbing it into the policy-making process.

Question 14: *What comments do you have on the policies? (4.3)*

The NBTA has addressed this point in Paragraph 8.4 Question 11 above.

Question 15: *What comments to you have on the implementation options? (4.4, Appendix 1 and 4.5)*

The NBTA has addressed this point in Paragraph 8.1 Question 2 and Paragraph 8.4 Question 11 above.

As a general principle "communication" is a given, or, conversely if communication could be considered to be inadequate then BW could be argued to demonstrate a non-compliance in relation to Art. 6 ECHR. Put another way if the communication is poor then BW can be reprimanded for not making the regulation plainly understood, a court would reject an application for enforcement action and the legislation would be rendered impotent. Therefore policy relying on such an approach would be defective.

Question 16: *Are there ways in which volunteers could help with this challenge?*

As stated in Paragraph 8.3 Question 8 above.

8.6 Provision of berths for residential use (section 5)

Question 17: *Do you agree with our analysis of this issue? (5.1)*

The NBTA asserts that the data presented underscores the gross under provision by BW of residential sites.

The NBTA does not accept the assertion of BW that there is demand for sites with fewer facilities if that statement is intended to assert that the presence of fewer facilities is sought after as a characteristic. With (1) such a gross under provision and (2) draconian implementation of a defective policy relating to "continuous cruisers" the NBTA asserts that "any mooring is preferable to none, even if the facilities are scant or non-existent".

The NBTA draws the attention of BW to “Draft Guidance on the design of sites for Gypsies & Travellers” which may be found at
www.communities.gov.uk/documents/housing/pdf/322684.pdf

The contrast between the principles laid out in the Draft Guidance and the policies of BW could not be starker.

The NBTA agrees that the simple assertion is that BW does not have a duty to provide housing. The NBTA draws the attention of BW to the statements made in paragraph 1.1 above.

For BW to asset that it must charge “market rates” for moorings is a defective statement when considered in the context of (1) what the NBTA has stated in Paragraph 8.1 Question 1 in relation to demographics and (2) housing associations, in the same section.

NBTA does not agree that there are no national policies in relation to Bargee Travellers. This issue been engaged in Paragraph 8.1 Question 1 above. In addition there are a number of legal authorities that provide guidance.

NBTA does not agree that planning applications for change of use are without merit because of the unusual nature of moorings for “live aboards”, the cultural precedent, the typically diminished infrastructure requirements, the naturally “light impact” that “live aboards” present combined with the low carbon footprint and quasi-housing association nature of such developments could designate mooring sites as “exception sites” and avoid green belt exclusion completely. For BW to argue that planning is a hurdle is disingenuous.

The only reason that fees for residential moorings are higher than for non-residential is confined to the artificially inflated market rates, a premium achieved by acute manipulation of supply and demand by BW. It follows that BW, exercising a quasi-monopoly in relation to online mooring rights also demonstrates a conflict of interest. It is curious that the OFT has not hitherto considered this property.

For BW to assert that problems could arise from residential moorings by way of visual intrusion, amenity and environmental impact is shocking. Irrespective of the implications of gross prejudice that such a statement harbours, such a statement flies in the face of the principles laid out in Circular 01/06. BW has no business making such statements.

The NBTA does not accept that BWs operations are interfered with by properly planned residential mooring deployment. BW would be a statutory consultee in the planning process relating to “change of use” and would have the opportunity under s.54 Planning and Compulsory Purchase Act 2004 to attend to its needs in relation to operations. The statement is fatuous.

The NBTA notes the references to security of tenure. This is echoed by the relationship between LAs terrestrial travellers and security terms for pitches in transit sites. The law in that respect is changing, obligating LAs as landlords to provide security of tenure to travellers. It follows that BW would be obligated to follow the same route.

Question 18: *What comments do you have on the policies? (5.2)*

(a) There appears to be a disparity between the words and the delivery in relation to (1) residential site provision (2) "continuous cruisers" policy (3) enforcement policy and (4) the wording (ie culture) of the BW consultation document.

(b) The "management" of residential mooring sites could in principle be confined to that of a council estate or private sector housing estate with LA servicing. In reality more elaborate management is advantageous for the benefit of residents (perhaps on a self-policing basis) although close supervision is intrusive, oppressive and in general contrary to the general culture of what a nomadic lifestyle represents.

(c) Guidance on site management may be obtained from the parallel document relating to site management of terrestrial traveller sites in document:
"Draft Guidance on the Management of Gypsy and Traveller Sites"
Found at www.communities.gov.uk/documents/housing/pdf/325828.pdf
Just as DCLG is responsible for establishing housing quotas on LAs, it may be appropriate for the same approach to be applied by DCLG in relation to residential moorings although this would be the product of further study.

(d) The NBTA is engaged "full on" with the issue of obtaining PPS from DCLG and engaging with the LAs (at least in the first instance through the island Housing Co-Op in the Reading area) to precisely this end. The NBTA will welcome the active input of BW in fostering this approach.

(e) The NBTA welcomes the stated policy of BW in terms of seeking to achieve change of use status for more moorings. There is clearly plenty to do in the first instance not least of which the issues that the NBTA has identified in this response.

(f) The standard treatment for terrestrial traveller occupation is either (a) an assured shorthold tenancy under the Housing Act 1988 (where travellers control the site on which the pitches are located or (b) in line with up-coming legislation, the Caravan Act, notwithstanding the difficulty presented by the case of Chelsea Yacht and Boat Club Ltd -v- Pope [2000] 22 EG 147. BW must understand that its public purpose is diverse and includes but is not confined to operational management, and that within the scope of the up-coming policy consultation and creation round within DCLG new responsibilities and obligations may manifest.

(g) The NBTA is not clear what is meant by "clear information" – on what? Regulation, guidance or advice?

8.7 Unauthorised residency at leisure moorings (section 6)

Question 19: *Do you agree with our analysis of this issue? (6.1 and 6.2)*

Paragraph 6.1

The NBTA is clear that for a mooring to be residential, change of use planning consent is required. However the NBTA also believes that BW has neither remit nor power to police or implement enforcement of contravention. Indeed to do so fails to recognise that the general thrust of guidance to LAs by DCLG in the treatment of unlawful encampment by travellers is “hands off” unless (a) direct and upheld complaint is made and (b) there is a transit site with pitches available within the jurisdiction. It appears that BWs strategy in this respect is archaic.

The NBTA takes absolute exception to the use by BW of the phrase “These people have taken a risk living on their boat when it’s not permitted”. The use of such language completely demeans the very essence of what “live aboard” Bargee Traveller culture represents. The NBTA asserts that for BW to use such phraseology demonstrates the true colours of BWs policy-making and this flies in the face of previous statements made by BW in paragraph 6.1 of the pre-consultation document.

Paragraph 6.2

The NBTA engages the concept of the consideration of “unfairness” in Paragraph 8.5 Question 13.

It appears that BW does indeed have a genuine reputation for intransigence and indeed draconianism and regrettably this reputation appears to be entirely deserved. This is a matter for BW to consider in the formulation of its policy on “communication”.

There is no evidence of difficulty between LPAs and BW in relation to planning. There is however some evidence of LPAs being dismayed with the hostile treatment by BW of would-be residential boat dwellers.

There is no evidence available to the NBTA of would-be residential users bidding higher for leisure moorings using the auction system. There is however evidence available of BW manipulating the auction system to force up the bid prices by the use of a reserve system. The NBTA invites BW to provide transparency in relation to the reserves used. Failing that it will be appropriate for the NBTA to requisition this data.

Question 20: *What comments do you have on the policies? (6.3)*

The general policy of DCLG in relation to its guidance to LAs in the treatment of unlawful encampments is that to repeatedly "move unlawful campers on" where there is plainly nowhere to go (ie not properly established transit sites) is that of "liaisser faire" both because (a) the reality is that noting constructive is achieved from the repeated moving on and, more relevantly, (b) the repeated "moving on" amounts to hounding and harassment; given the Art 8 implications, to do so could present great difficulty to the LAs in question. BW should consider this approach extremely carefully because precisely the same scenarios play out, as manifest in Fuller & Ors R (on the Application Of v Chief Constable of Dorset Police & Anor [2001] EWHC Admin 1039.

The NBTA (specifically the subset under the banner of the "Island Housing Co-Op") has actively engaged with the EA and the LA in relation to preparing a shortlist of potential sites for provision of residential moorings under EA jurisdiction, to assist the LA in meeting its obligations to provide residential moorings.

Question 21: *What comments to you have on the implementation options? (6.4 and appendix 2)*

The NBTA has addressed the issue of "moving on" in Paragraph 8.7 Question 20 above.

The NBTA has reservations in relation to the power of BW to refuse to issue a licence to a "live aboard" following the principles outlined in SSCSA tribunal matter Commissioners-[2002] UKSSCSC CH 844 2002. It is clear that licensing is an intrinsic part of someone using a boat as their home (assuming that Art 8 ECHR is engaged because the boat is a "live aboard"). It follows that to decline a licence is interfering with the persons Art 8 rights.

Art 8 is a qualified right and in this instance in qualification is "in the interests of the rights and freedoms of others (ie other canal system users". However it has to be said that to define a licence using defective terms (by restricting a licence to be either that of "continuous cruising" or "holidaymaker") has no bearing on the rights and freedoms of other system users. The issues of the defective nature of this licensing regime is engaged in Paragraph 8.1 Question 1 above.

The general tenor of the policy stated in Appendix 2 (d) is hostile to "live aboards" and is therefore grossly inconsistent with the statements made in paragraph 5.2(a). In general there are a number of occurrences where the statements made are significantly inconsistent with that specific paragraph. The NBTA invites BW to reconsider this process in the round in the light of this accusation.

Nick Brown
Secretary
National Bargee Traveller Association
21st April 2009