

## National Bargee Travellers Association

### Consultation response: Proposed bye-law by the London Borough of Richmond upon Thames to prevent and suppress the nuisance of unauthorised mooring.

#### 1 Introduction

1.1 The National Bargee Travellers Association is a volunteer organisation formed in 2009 that campaigns and provides advice for itinerant boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring that has planning permission for residential use. Security of tenure for those with residential moorings is also a matter of concern. We are extremely concerned about the adverse impacts and the legal correctness of this proposed bye-law and we set out our concerns below.

#### 2 The proposed bye-law is *ultra vires*

2.1 The London Borough of Richmond upon Thames does not have the legal power to introduce the proposed bye-law. The bye-law and any prosecutions resulting from it if passed would be unlawful and the London Borough of Richmond upon Thames would therefore be acting *ultra vires* in passing it.

2.2 According to s.79(2) of the 1932 Thames Conservancy Act the Public Right of Navigation on the non-tidal Thames entitles boats to moor, anchor or remain stationary for a "reasonable time in the ordinary course of pleasure navigation". The Public Right of Navigation includes the right to moor on the towpath as confirmed in Bye-law 54b of the Thames Navigation and General Bye-laws 1993. This right exists wherever the Environment Agency possesses an easement over the towpath of the River Thames; the easement covers the majority of the towpath. In addition, public quays exist throughout the Thames. On all land that the public has acquired the right of mooring or unloading, by whatever means, vessels may stay as long as they like, provided this right is exercised reasonably (J B Phear Esq: *A Treatise on Rights of Water*, Stevens and Norton 1859).

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

2.4 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. The Court made no ruling on what length of time constitutes "temporary".

2.5 The bye-law as drafted criminalises any mooring to the bank outside of marked areas without qualification. That can only be proper if the London Borough of Richmond upon Thames owns all the bankside property and the easement possessed by the Environment Agency does not cover this land. Otherwise, the bye-law would prohibit other owners' and easement possessors' control of their own property or rights, and those private owners consenting to visiting boats mooring to their property would have that power of consent

removed, which is *ultra vires*.

### **3 Human Rights**

3.1 The proposed bye-law will result in homelessness for boat dwellers. A boat dweller is homeless if they live on a boat but have nowhere to moor it. This is a violation of their right to respect for their homes under Article 8 of the European Convention on Human Rights.

3.2 The proposed bye-law also contravenes Articles 8 and 14 of the European Convention on Human Rights in that the effect of the bye-law will compel boat dwellers without permanent moorings to travel in a way that makes it difficult or impossible for them to remain in employment and maintain access to healthcare. This would breach their right to respect for their private and family life under Article 8 and would contravene Article 14 by discriminating against this demographic group by disrespecting their Article 8 rights in comparison to other residents of the London Borough of Richmond upon Thames. The sanction of criminal penalties will breach the right to respect for one's home due to the consequent criminalisation of a person for merely living in a particular way and possible forced removal of the boat. This also contravenes Article 14 by discriminating against this demographic group by disrespecting their Article 8 rights in comparison to other residents.

3.3 The proposed bye-law contravenes Protocol 1, Article 1 of the European Convention on Human Rights. By subjecting the boat dweller without a permanent mooring to such criminal penalties interferes with the right to peaceful enjoyment of one's possessions. The discriminatory nature of this effect also breaches Article 14.

3.4 The proposals contravene Protocol 1, Article 2 of the European Convention on Human Rights. Subjecting boat dwellers who have children in school to this draconian bye-law breaches their children's right to education. Parents will be forced to withdraw their children from school if this bye-law comes into force and they comply with it. The discriminatory nature of this effect also breaches Article 14.

### **4 Duty of care**

4.1 Local authorities have a duty of care towards all citizens within their boundaries. To deliberately cause homelessness to a group of people is a breach of the duty of care that constitutes gross negligence.

### **5 Local authorities' duties under s.225 of the Housing Act 2004**

5.1 The Department for Communities and Local Government (DCLG) ruled in April 2009 that 'bargee travellers', that is, itinerant boat dwellers without a permanent residential mooring, can be covered by s.225 of the Housing Act 2004 which defines who is a traveller. The Housing Act 2004 places a statutory obligation on a local authority. All policy and practice of local authorities must therefore be consistent with s.225 of the Housing Act 2004 and must not result in homelessness for itinerant boat dwellers.

5.2 The Housing Act 2004 requires local authorities to assess the need for Gypsy and Traveller accommodation in their areas at the same time as they assess the housing requirements of the rest of the population. Local authorities must then develop a strategy which addresses the need arising from the accommodation assessment, through public or private provision. Elected members have a duty to represent the interests of resident Gypsies and Travellers as well as the settled community. In proposing this bye-law,

London Borough of Richmond upon Thames is acting in direct opposition to the interests of resident Gypsies and Travellers. This is unlawful.

5.3 At the very least, the London Borough of Richmond upon Thames should be working with the Environment Agency and the Port of London Authority to ensure an adequate provision of temporary moorings - the bargee traveller's equivalent of a transit site - rather than reducing the amount of mooring space. It is in the council's interests to address our concerns, because preventing boats from mooring and introducing criminal sanctions will result in boat dwellers becoming homeless and becoming dependent on council services and welfare benefits whereas at present they are self sufficient.

## **6 Equality Act 2010**

6.1 The Public Sector Equality Duty in the 2010 Equality Act places a duty on public bodies to prevent discrimination and promote equality. The proposed bye-law discriminates against people who live on boats without permanent moorings and will have a disproportionate adverse impact on boat dwellers without permanent moorings. The proposed bye-law therefore amounts to a breach of the Equality Act 2010.

6.2 To be a boat dweller without a permanent mooring identifies the adoption by the user of a specific philosophy. An alternative definition of "philosophy" is "belief". It follows that s.10 of the Equality Act 2010 is engaged and thus boat dwellers without permanent moorings enjoy the protection of the Equality Act 2010 including s.29 and s.149.

6.3 London Borough of Richmond upon Thames appears to have failed to identify the demographic grouping to which the proposed bye-law relates; has failed to identify whether the demographic grouping exhibits protected characteristics within the meaning of the Equality Act 2010; has failed to identify whether the bye-law would have adverse impacts on the demographic grouping and has failed to amend or withdraw the proposed bye-law accordingly.

6.4 In addition, as far as we are aware no Equality Impact Assessment has been carried out of the effect of the proposed bye-law This is illegal. s.149 of the Equality Act 2010 requires a public body to conduct an Equality Impact Assessment before bringing into force a new provision such as this.

6.5 The proposed bye-law also discriminates on grounds of age contrary to the Equality Act 2010. It will have a disproportionate adverse impact on children of school age who live on boats without permanent moorings for the reasons stated above.

6.6 The proposed bye-law will also create sex discrimination contrary to the 2010 Equality Act. It will have a disproportionate adverse impact on the ability of pregnant women and new mothers who live on boats without permanent moorings to gain access to the maternity health care they are entitled to.

## **7 Safety on the towpath**

7.1 The presence on the towpath of residential boats in Richmond provides passive security for towpath users such as walkers and joggers. The towpath should be used for mooring boats, not left as a no-go area where anti-social behaviour can flourish due to a lack of neighbourly scrutiny. Many users of the Thames path, especially lone women, report feeling safer when residential boats are present, especially in urban areas. If the

London Borough of Richmond upon Thames wishes to attract more visitors to the Thames path it must recognise the invaluable contribution to safety made by boat dwellers.

## **8 Lack of evidence**

8.1 London Borough of Richmond upon Thames has provided no evidence with this consultation that the nuisances that are cited to justify the proposed bye-law either exist or were committed by boat dwellers. In the circumstances we can only conclude that this proposed bye-law is driven by prejudice and a lack of understanding of the rights of boat dwellers without permanent moorings.

## **9 Remedies already exist**

9.1 Adequate remedies already exist to deal with the type of nuisance that the proposed bye-law is purported to prevent. There is no need for any additional legislation.

9.2 The Thames Navigation and General Bye-laws 1993 contain powers to remedy nuisance by boats such as the lighting of fires, obstruction of the towpath and excessive noise, and include in bye-law 57a the general power to remedy annoyance caused to the occupier of a riparian residence by the "loitering or delay of any house-boat or launch". The Port of London Authority has similar powers such as bye-law 56 of the Port of London River Bye-laws 1978. In addition to these powers specific to the navigation authorities, general criminal and environmental health remedies exist for anti-social behaviour, noise nuisance, dangerous dogs, dog fouling, litter and breach of the peace, which local authorities should already be aware of.

## **10 Government Code of Practice on Consultation**

10.1 Section 4.1 of the Government Code of Practice on Consultation states that "It is essential that interested parties are identified early in the process so that consultation exercises can be designed and targeted accordingly. When consultation exercises need to reach a diverse audience, several approaches may be required. In the consultation document it should be stated what ways are available for people to participate, how exactly to get involved, and why any supplementary channels have been chosen. Over-reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded and others receive consultation documents that are not relevant to them".

10.2 London Borough of Richmond upon Thames has provided no evidence that it has effectively targeted this consultation document at the main group affected by the proposals, boat dwellers without a permanent mooring.

10.3 As far as the National Bargee Travellers Association is aware, no special measures have been taken to ensure that those most affected by the proposals are included in this consultation. Indeed as the chief representative group of itinerant boat dwellers we were not invited to respond and we only found out about this consultation by chance very near to the end of the consultation period.

10.4 In the absence of evidence that the group most likely to be directly affected has had a proper opportunity to comment in line with the Code of Practice on Consultation, we believe that the results of the consultation will constitute prejudice against a protected minority group and will contravene the authority of R v Brent London Borough Council ex

parte Gunning [1985] 84 LGR 168. To be proper, consultation must allow those affected by the proposals to give intelligent consideration and an intelligent response. This clearly has not happened.

## **11 Unfairness**

11.1 The proposed bye-law is unfair in that it proposes to penalise all boat owners for the actions of a few. To lose the right to moor on the towpath or on private land for a "reasonable time" is a very great loss to boat owners regardless of whether they live on their boats. It is an example of the extreme lack of understanding of the rights and needs of boat dwellers and leisure boaters amongst the settled and non-boating community that the solution proposed to a perceived problem is to restrict mooring for all boat owners regardless of whether they have themselves caused a nuisance. In passing the bye-law the London Borough of Richmond upon Thames would be acting contrary to the requirement on public bodies to exercise power reasonably following the authority of *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 1KB 223. The proposed bye-law amounts to collective punishment; in other contexts collective punishment would be a crime. This is fundamentally unjust.

## **12 Conclusion**

12.1 If the London Borough of Richmond upon Thames goes ahead with the proposed bye-law it will lay itself open to legal challenge for the reasons stated above.

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