

Middle Level Bill

Against – on merits – Praying to be heard by Counsel, &c.

To the Honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled.

THE HUMBLE PETITION of National Bargee Travellers Association.

SHEWETH as follows:-

1. A Bill (hereinafter referred to as “the Bill”) has been introduced and is now pending in your honourable House intituled “Middle Level Bill”.

2. The Bill is promoted by the Middle Level Commissioners (hereinafter referred to as “the Commissioners”). The Preamble to the Bill amongst other things recites that an Act of Parliament passed in 1810 established a body of Commissioners called the Middle Level Drainage Commissioners with power and jurisdiction to improve the drainage of the rivers, drains, lands and grounds, and that further Acts of Parliament amended the functions and reconstituted the body as Commissioners of drainage and navigation and transferred to them functions relating to navigation in the waterways of the Middle Level. The Preamble also claims that it is expedient to update the Commissioners' powers to regulate navigation; to confer further powers to regulate other activities affecting the use of the waterways for navigation; to confer powers to levy charges in respect of vessels using the waterways; to confer powers requiring the registration of vessels using the waterways; to revise provision in relation to the auditing of the Commissioners' accounts; to enact other provisions and that the objects of this Act cannot be attained without the authority of Parliament.

3. Your Petitioners object to the following Clauses:

Clause 2, which interprets the term “waterway”.

Clause 3, which would empower the Commissioners to fix and recover charges for the use of any waterway by any vessel; to provide services and facilities in respect of the waterways and their banks; to compel registration of any vessel under navigation byelaws and to make the use of services and facilities subject to terms and conditions.

Clause 4, which would empower the Commissioners to carry out reciprocal enforcement activities with other navigation authorities against boat owners and to carry out reciprocal registration and charges for navigation with other navigation authorities.

Clauses 5 and 6, which would empower the Commissioners to close parts of the waterways or to close locks to navigation by vessels.

Clause 8, which would empower the Commissioners to immediately remove any vessel that is sunk, without notice to the owner; to remove any vessel that is stranded or abandoned with only 14 days' notice and any vessel that is moored without lawful authority with only 28 days' notice; to seize such boats within 6 weeks and to charge the owner for the cost of removal.

Clauses 9 and 10, which would empower the Commissioners to make certain byelaws including for controlling navigation; regulating the conduct and activities of persons using the waterways or banks; imposing safety standards on vessels; requiring insurance of vessels and requiring payment of charges for registration of vessels; making it a criminal offence not to register a vessel and empowering the Commissioners to refuse registration of a vessel.

Clause 11, which would empower the Commissioners to pass boat owners' personal information to third parties.

Clause 12, which would empower the Commissioners to develop the waterways for recreation and build moorings.

Clause 13, which would empower the Commissioners to subcontract enforcement of byelaws to third parties.

Clause 15, which would empower the Commissioners to serve enforcement notices by post.

4. Your Petitioners are an association of Bargee Travellers, that is, residents on boats without permanent residential moorings on Britain's inland and coastal waterways, established in 2009 to campaign on any issue that is relevant to Bargee Travellers; to provide an effective means for them to voice their concerns on any issue that is relevant to them and to provide advice and support for them on relevant issues including onward referral to specialist professional agencies. The National Bargee Travellers Association has over 700 members, four local groups, and represents the interests of the estimated 15,000 to 30,000 Bargee Travellers in the UK. A significant number of the members of the National Bargee Travellers Association either live permanently on the Middle Levels or use the waterways regularly. Your Petitioners allege that the proposals contained in the Bill will directly and specially affect the homes and possessions of Bargee Travellers.

5. Your Petitioners and their rights, interests and possessions are injuriously affected by the Bill, to which your Petitioners object for reasons amongst others, hereinafter appearing.

6. Your Petitioners object because the Bill contains no protection for the homes of people who live on boats, either for those with or without permanent moorings, and it fails to recognise that Articles 6 and 8 of the European Convention on Human Rights provide boat dwellers with protection for their homes. The legislation and enabled byelaws could be used to evict boat dwellers, seize boats and carry out social clearance and the discriminatory exclusion of boat dwellers from the Middle Level. The residential use by private citizens of vessels that do not have a permanent mooring is not prohibited anywhere in law and is therefore permitted.

7. Your Petitioners object to Clause 2 because the interpretation of "waterway" seeks to extend the Commissioners' powers to all adjacent waters including private waters over which the Commissioners do not have jurisdiction.

8. Your Petitioners also object to Clause 3(1) because the Commissioners already have the power to charge boats for the use of their waterways, except for pleasure boats. This clause would extinguish the ancient right to use boats not used for the carriage of goods without payment of toll or duty. We object to the erosion of our rights to freely access the Middle Level for non-commercial purposes. These rights were bequeathed to us, the people of Britain, hundreds of years ago and under no circumstances should they be extinguished. Because use of the Middle Level is currently free, they are home to a number of boat dwellers on low incomes, who cannot afford to live on waterways where registration or licence fees are levied, who would be forced out of their homes due to an

inability to pay.

9. When the Fens were drained in the 17th century to provide agricultural land, it destroyed a way of life for local people who relied on boats as their traditional form of transportation between the hundreds of small islands. The Fifth Earl of Bedford, Francis Russell, who was responsible for the drainage project, therefore gave rights of access to private citizens to use their boats on the new canals and drains as long as they did not transport goods or merchandise. Essentially pleasure boats were allowed free of charge. These rights were conferred by the Nene Navigation Act 1684. Pleasure boats have had free navigational access to the Old River Nene, which forms a large navigational section of the Middle Level, from before 1215 protected by Magna Carta and many subsequent statutes and Royal Commissions. There are even Roman transcripts describing navigation along the Old River Nene as early as the 4th Century during the Roman occupation. The Old River Nene is a natural river and a Public Right of Navigation has existed since Time Immemorial and was first codified in the Magna Carta of 1215.

10. The drains were and are still funded by land owners who collectively pay a total of over £3 million each year for drainage and irrigation. Without these drains their land would be swamp and their crops destroyed. This is some of the most productive farmland in the UK. The six locks are needed to prevent tidal seawater from flooding the land and to maintain the water level for drainage purposes. Dredging is necessary to maintain the drainage function. Land owners also extract water from the drains for irrigation. DEFRA also fund the area with taxpayers' money as part of the UK's flood strategy. No other waterway in the UK has this kind of funding, but equally the Middle Level is not a navigation in the sense that other waterways are; it is a network of navigable drains. There are only six locks to maintain, no boaters' facilities, no moorings and no towpaths for the Commissioners to fund, so apart from the locks and some dredging, the Commissioners' navigation role is very limited. The Commissioners are not undertaking to provide any extra services, toilet and shower facilities, refuse and sewage disposal facilities, moorings, towpaths, guaranteed navigable depth of water or dredging in return for navigation charges, as are normally provided on waterways where fees are payable. The Commissioners appear to have over-estimated the number of boats that they propose to receive charges from.

11. Your Petitioners also object to Clause 3(3) because “the use of the services and facilities” is not defined and has no mechanism to limit the Commissioners' ability to impose terms and conditions. This will give the Commissioners power to do anything they like, which would be an open door to the harassment and persecution of boat dwellers, as we have seen on other navigation authorities' waterways. In any event, there are no services and facilities provided by the Commissioners apart from navigational structures and there already are byelaws regulating the use of these. All boaters, but especially boat dwellers, will be severely disadvantaged by the imposition of terms and conditions. At present, the Middle Levels are the one waterway system where boaters are not forced to agree to terms and conditions in return for the ability to navigate. Boaters will lose a safe haven where they can go if they are unable, through no fault of their own, to comply with the terms and conditions imposed by other navigation authorities, such as the draconian distance requirements that Canal & River Trust demands of Bargee Travellers.

12. Your Petitioners also object to Clause 4(1) because it will put boaters at risk of unlawful enforcement action carried out by another navigation authority being passed on to the Commissioners to enforce, amounting to harassment and persecution of the boater and bringing the Commissioners into disrepute. It would further compound the loss of a safe haven where boaters, especially boat dwellers, can go if they are unable, through no fault of their own, to comply with the terms and conditions imposed by other navigation authorities.

13. Your Petitioners also object to Clause 4(2) because the Commissioners have no control over

other navigation authorities' registration and charging arrangements and are not in a position to provide this in return for the proposed charges.

14. Your Petitioners also object to Clauses 5 and 6 because they would put our rights of navigation during certain times of the year at risk. It would be unfair for the Commissioners to charge boat owners to use the waterways and then close the waterways for the benefit of other, non fee paying, members of the public. There is no provision for waiting areas or the waiver of mooring charges during closures.

15. Your Petitioners also object to Clause 8 because the Commissioners already have powers to remove and seize sunken boats and to recover the costs of this; see Article 17 of the Middle Level Navigation By-laws 1875 and *Middle Level Commissioners v Marnier* [2006] EWCA Civ 931. There are ongoing disputes with land owners and owners of residential properties with moorings as to whether the land and moorings belong to the Commissioners or not. This could give the Commissioners authority to evict boats from moorings that have existed for decades. There is no definition of "without lawful authority". As it stands, this clause would allow the Commissioners to prohibit the residential use of vessels. This would violate the rights of boat dwellers under Articles 6 and 8 of the European Convention on Human Rights to due process and respect for the boat dweller's home. Boats that are people's homes could be summarily removed without the opportunity for the boat dweller to defend themselves. There is no requirement for the Commissioners to ascertain whether or not a vessel is someone's home. There are no criteria for the reasonableness of removal and seizure of a vessel or refusal or revocation of registration.

16. Your Petitioners also object to Clauses 9 and 10 because the Commissioners already have byelaw making powers under the Middle Level Act 1874 and these powers are adequate. The proposed byelaws would criminalise boat dwellers who through no fault of their own could not afford to pay for registration; boaters would have the risk of being refused a licence and having to take the Commissioners to a Magistrates Court to appeal their decision, which would be time-consuming, stressful and incur court costs. This could open the door to victimisation and clearance of the waterways of any boats that the Commissioners do not like, especially boat dwellers. The byelaws would penalise boat owners who for no fault of their own were unable to immediately bear the cost of a safety examination and of carrying out alterations to comply with safety standards.

17. The proposed draft byelaws could be used to exclude boat dwellers from the Middle Levels. The definition of "houseboat" and the use of the term appears to seek to prevent and criminalise the residential use of vessels that are also used for navigation or as a means of transport. Many vessels are used both as a home and as a means of transport or for navigation. The Commissioners have not provided any definition of "used as a means of transport". The draft byelaws would lead to an arbitrary and draconian interpretation of whether a vessel is "used as a means of transport" in a way that would violate the rights of boat dwellers under Article 8 of the European Convention on Human Rights.

18. Fixed and enforced mooring time limits do not reflect the reality of navigating all year round. Circumstances such as flood; high winds; mechanical breakdown; illness; ongoing medical treatment; disability; pregnancy; family emergency and caring for vulnerable or elderly family members mean that Bargee Travellers may need to stay longer than a given time limit. They need to be able to do so without being penalised for circumstances that are beyond their control and no fault of their own. To do otherwise would be fundamentally unjust and unreasonable. The definition and use of the term "emergency" is too narrow; in the case of boat dwellers, giving birth (for example) is not an emergency but is likely to require a longer stay at a mooring location. In many cases it is not possible to predict accurately the duration of the "emergency" or the circumstances requiring a longer stay. The proposed byelaws would be repugnant to the general law as they would prevent

vessels mooring for temporary periods in the course of navigation, “temporary” being dependent on factors such as the circumstances of the boat, river conditions and weather.

19. There is no safeguard protecting the use of a vessel as a home or against any arbitrary mooring or movement restrictions. There is no safeguard against the victimisation and bullying of boat dwellers by navigation authority staff which regrettably is a regular occurrence on the waterways and there is no definition of “the exercise of any statutory function of the Commissioners in respect of Navigation”.

20. Your Petitioners also object to Clause 11 because it would violate the rights of individuals to privacy under the Data Protection Act and under Article 8 of the European Convention on Human Rights.

21. Your Petitioners also object to Clause 12 because it would interfere with the public right of navigation and would open the door to clearances of boat dwellers in favour of recreational use, violating their rights under Article 8 of the European Convention on Human Rights. The predominant use of the UK's inland waterways at the present time is not recreation: statistics collected in 2016 by the UK's largest inland navigation authority (Canal & River Trust) show that around 50% of boats are used as permanent or temporary homes. There is no provision for developing the waterways for the use by vessels that are used as primary residences, whether or not these vessels have permanent moorings.

22. Your Petitioners also object to Clause 13 because subcontracting enforcement of byelaws to third parties would open the door to harassment and intimidation of boat dwellers by third party security and enforcement companies.

23. Your Petitioners also object to Clause 15 because serving enforcement notices by post would disadvantage boat dwellers without permanent moorings, who do not enjoy a residential postal service, to the extent that their rights under Article 6 of the European Convention on Human Rights would be violated.

24. Your Petitioners also object because the Bill contains no obligations under which the Commissioners would be duty bound to provide an adequate depth of water for navigation; dredging; maintenance or any facilities to boaters. Essentially, boaters would notice nothing positive, but would be subject to legislation that would: force them to pay a fee to register; pay annual licence fees; be a criminal offence to use the navigation without a licence; be forced to display a registration number; restrict access during certain times of the year; have the risk of being refused a licence and appealing the decision in a Magistrates Court. There are no advantages for boaters in return. This will destroy the Middle Level navigation and the boating community.

25. Your Petitioners also object because the Bill contains no provisions for any moorings to have a minimum stay time of 14 days and no proposal for widespread provision of 14-day moorings.

26. Your Petitioners also object because many Bargee Travellers regularly use the Middle Levels as a transit route between the East Anglian waterways such as the Rivers Cam, Great Ouse or Wissey and the rest of the inland waterways. There is no other inland waterway route and there would be no choice but to be bound by the proposed terms and conditions and to pay the proposed charges.

27. Your Petitioners also object because to introduce charges for the use of the Middle Level waterways would result in a vast reduction in consumer choice regarding the use of the inland waterways. At present, boaters who are unhappy with the way that other navigation authorities run their waterways and with their treatment of boat licence holders have the choice of travelling to the

Middle Level, where they are not subject to either terms and conditions or to charges. This Bill will vastly reduce consumer choice and will have an adverse effect on all boaters, but the effect on those who live on their boats will be the most detrimental because there will be virtually nowhere else they can go. There is no valid reason why the statutory framework of the Middle Level must align with that of other navigation authorities' waterways.

28. There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioners and their rights, interests and possessions and for which no adequate provision is made to protect your Petitioners.

29. The Preamble to the Bill, in so far as it relates to the matters aforesaid, is untrue and incapable of proof.

YOUR PETITIONERS therefore humbly pray your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their Counsel, Agents and witnesses in support of the allegations of this Petition against the Preamble and against such of the clauses and provisions of the Bill as effect the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.

Pamela Smith
Chair
24th January 2017

Nicholas Brown
Secretary
24th January 2017