

National Bargee Travellers Association

Response to Elmbridge Council consultation on draft Unauthorised Mooring Public Spaces Protection Order, November 2023.

Elmbridge responses highlighted in Blue.

Introduction

The National Bargee Travellers Association (NBTA) 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 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. The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Bargee Travellers. There are as yet no accurate statistics for the number of people living on boats either with or without a permanent mooring in the UK. The NBTA deals with approximately 200 individual cases each year.

The proposed Unauthorised Mooring Public Spaces Protection Order will have a severe detrimental effect on the quality of life of Bargee Travellers: people who live on their boats without a permanent mooring. This is a draconian proposal that will punish people for the simple act of living in their homes. Many responsible residents live harmoniously on their boats in the area while maintaining jobs, raising children, and contributing positively to the culture and economy of Elmbridge and the wider Thames area. Restricting mooring time limits to 24 hours would make it impossible to live in the Elmbridge area on a boat. Boaters need longer time to moor to keep jobs, work on our boats, look after our children and everything else that goes along with living in our homes. These restrictions would mean the annihilation of the community in the area which provides such a cultural boon and lowers crime by being a supportive active presence on the river bank.

Public Right of Navigation

The proposed Public Spaces Protection Order (PSPO) would violate the Public Right of Navigation (PRN) on the River Thames, which has existed since Time Immemorial and was first codified in Article 29 of the Magna Carta of 1215 and more recently in Section 79 of the Thames Conservancy Act 1932.

The PRN includes the right to moor for a "reasonable time" (see Halsbury's Laws of England, 5th edition, paragraph 691). The PRN includes the right to moor and fix temporary moorings in the waterway, or on the foreshore or to the ground for undefined temporary periods on the river banks, including on private land; riparian land owners do not have an automatic right to demand payment. Contrary to the assertions of Elmbridge Council in its draft Order, Section 79 of the 1932 Act does not define mooring for a "reasonable time" as mooring for 24 hours, but rather leaves a "reasonable time" undefined.

In *Blundell v Catteral* (1821), the right of passage is described as follows:

"By common law, all King's subjects have in general a right of passage over the sea with their ship boats and other vessels, for the purposes of navigation commerce trade and intercourse, and also in navigable rivers...."

The above was reinforced by *Thames Heliports Plc v London Borough of Tower Hamlets* (1996) as follows: *"the activity of ships boats and other vessels passing over the water for*

the purposes of navigation, commerce trade and intercourse”.

It is agreed that there is a common law right. Further it is agreed that there is a Public Right to Navigate (PRN) under section 79 of the Thames Conservancy Act 1932 and that there is a right under s79(2) *“to anchor moor or remain stationary for a reasonable time in the ordinary course of pleasure navigation.”*

No information has been provided by the National Bargee Travellers Association of a similar associated right to moor under the Thames Conservancy Act 1932 where the PRN is **not** utilised in the ordinary course of pleasure navigation, for example residential purposes.

Section 136 of the same Act states *'no charge shall be made for vessels tied up or moored at night or for a reasonable time.'*

However, nothing contained in section 79, or in the byelaws or regulation maybe made by the Environment Agency, (successors of Thames Conservators), can be *“construed to deprive any riparian owner of any legal rights in the soil or bed of the Thames which he may now possess or of any legal remedies which he may now possess for the prevention of anchoring mooring loitering or delay of any vessel....”*

Case law has established that "reasonable" cannot be defined in advance but has to be decided on a case-by-case basis, so any mooring time limit such as 24 hours with no return within 72 hours is also unlawful (see for example Moore v British Waterways, [2013] EWCA Civ 73). The rights of the owner of the soil are subject to the precedent general rights of the public to exercise the PRN (see Edmund Whelan, Marine Law: Public Rights of Navigation, page 77).

The judgement in Crown Estate Commissioners v Fairlie Yacht Slip Ltd [1978] Scot CS CSIH 3 confirms that while a PRN does not extend to the right to lay permanent mooring structures, where a PRN 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”. Further authority is given in Tate and Lyle Industries Ltd v Greater London Council [1983] 2 AC 509 545, Moore v British Waterways [2009] EWHC 812 (Ch) and others.

Public quays exist throughout the Thames. On all land, for example on a wharf, 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).

The policy of the Environment Agency (EA) of defining a "reasonable time" as 24 hours is not supported by either statute or case law, and the EA is acting *ultra vires* in imposing this blanket time limit. The PSPO would itself be *ultra vires* because it seeks to undermine the lawful rights of boaters and to usurp the powers of the navigation authority in legislation such as Section 79 of the Thames Conservancy Act 1932. Insofar as it would be *ultra vires*, the PSPO would therefore also breach Section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014. Therefore the PSPO would be unenforceable as it would be invalid.

Boats may only be prevented from mooring if they remain 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. “Reasonable” is dependent upon the facts

and cannot be laid down in advance.

In [Royal Borough of Kingston-Upon-Thames v Salzer & Anor \[2022\] EWHC 3081 \(KB\)](#), at paragraph 4:

“4. Section 79(2) of the Thames Conservancy Act 1932 states all vessels have the statutory right 'to anchor moor or remain stationary for a reasonable time in the ordinary course of pleasure navigation' . Section 136 of the same Act states 'no charge shall be made for vessels tied up or moored at night or for a reasonable time' . The terms of this provision do not prevent fees or charges being applied and it is for the Council, acting reasonably to determine what amounts to a reasonable time. They have determined a period of 24 hours as the free mooring period which is in accordance with long established custom and practice by other navigation authorities such as the Environment Agency and their predecessors in this regard (the Conservators of the River Thames).”

It not agreed that the EA's policy is not supported by case law. It is noted as a long-standing custom and practice.

Banning or restricting mooring with steep criminal penalties for overstaying mooring time limits would compromise navigational safety by forcing boaters to navigate in unsafe river conditions. This could result in boats sinking and loss of life. This is precisely why the PRN includes the right to moor for a "reasonable time", "reasonable" not being definable in advance. Has the Council considered what justification of its policies its staff would be required to provide to a Coroner in such circumstances?

In seeking to curtail mooring for a reasonable period of time, any such PSPO would be seeking to rescind the PRN and thus seeking to rescind Article 29 of the Magna Carta of 1215 and additionally to set aside authorities from Courts of Record. Secondary legislation such as a PSPO cannot be used to rescind or usurp rights that derive from common law or primary legislation.

It is not agreed that what is 'reasonable' cannot be decided in advance. It not agreed that such a PSPO would rescind the PRN.

The aim of the PSPO is to ensure that the PRN and the temporary right to moor and to remain stationary for a reasonable time is open to all those navigating the River Thames. It is to ensure that temporary moorings are not monopolised by the few overstaying and potentially causing a risk of obstruction along the River Thames.

However, the Council will have regard to the Guidance on River Thames: current river conditions before considering whether to enforce the PSPO if a PSPO is made. The Draft Environmental Enforcement Policy has been updated, to take into account unauthorised moorings or overstaying and this Guidance. (More response on this below). If adopted, the PSPO would not be enforced where river conditions are deemed as unsafe by the EA and the draft PSPO makes references to the River Conditions.

The ordinary use of the River Thames is that for '*purposes of navigation commerce trade and intercourse*'. The PSPO is not to usurp PRN but to ensure that the rights under section 79 of the Thames Conservancy Act 1932 are not subject to abuse.

In the event that a PSPO is made, there is still the right of challenge to the High Court under section 66 of the Anti Social Behaviour, Crime and Policing Act 2014.

The definition of Anti-Social Behaviour

PSPOs are intended to address Anti-Social Behaviour (ASB). A PSPO is an order issued by a local authority which is designed to tackle activities carried on in a public place which

have a detrimental effect on the quality of life of those in its locality and which prohibits specified things being done in a restricted area or requires specified things to be done by persons carrying on specified activities in that area, or does both of those things.

Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 states that a local authority may make a Public Spaces Protection Order if satisfied on reasonable grounds that the following two conditions are met:

Firstly, that activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

Secondly, that the effect, or likely effect, of the activities is, or is likely to be, of a persistent or continuing nature; is, or is likely to be, such as to make the activities unreasonable, and, justifies the restrictions imposed by the Notice.

There is nothing inherently anti-social in mooring a boat that is your home on a river bank for an undefined reasonable time. According to the Crime and Disorder Act 1998, Anti-Social Behaviour is action causing "harassment, alarm or distress". Mooring for an undefined reasonable time without the consent of the landowner clearly does not satisfy the statutory definition of Anti-Social Behaviour. The simple act of mooring a boat for an undefined reasonable time on a river bank does not of its nature have a detrimental effect on quality of life, and it does not inherently damage or degrade open spaces to the extent that they are not open to all on a continuing basis. Therefore the conditions in Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014 are not met.

There is a grave danger that any PSPO that creates a blanket ban on mooring for longer than 24 hours will penalise and criminalise innocent boat dwellers who are not guilty of any Anti-Social Behaviour. The Council has identified littering and noise pollution as the activities that it alleges cause nuisance. Therefore it is disproportionate, contrary to Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, to target the activity of alleged "unauthorised mooring".

The Council claims that "the unreasonable and persistent nature of mooring without consent" has a "detrimental effect on those living in the locality". However, no evidence has been provided of how the quality of life of housed residents has been affected or that that the activity of mooring a boat does indeed have a significant detrimental effect on quality of life or is unreasonable. There is no explanation of how "unauthorised mooring" might cause, per se, Anti-Social Behaviour. The Council states in its Equality Impact Assessment dated 20th October 2023 that it has received 99 complaints since 2014 about a number of issues connected to the unauthorised mooring of boats, but no evidence is provided regarding how the unauthorised mooring of boats is anti-social, or how this has a detrimental impact on the quality of life of local residents.

The act of mooring a boat in itself cannot remotely be described as "anti-social". The Anti-Social Behaviour, Crime and Policing Act 2014 only gives Council the statutory power to make a PSPO if activities are persistent and will have a detrimental effect on quality of life. The scale and scope of the PSPO are thus disproportionate to the perceived problems.

The PSPO will cause widespread homelessness amongst the Bargee Traveller community. The Council states that the latest count shows 116 boats moored along the River Thames within Elmbridge. Previous research shows that for boat dwellers there is an average of 2.1 people living on each boat.

A person whose home is a boat who has nowhere that they are entitled or permitted to

place it and reside in it is homeless. To prohibit mooring for longer than 24 hours effectively renders a boat dweller homeless. It is deplorable that the Council is proposing a PSPO the effect of which will be to make around 244 people homeless.

At the present time this community relies on mooring for periods considerably longer than 24 hours on each of the named river bank sites in Elmbridge in order to continue to occupy their homes and access their employment, their children's education, and any health care they need. The consultation has failed to propose any measures that would protect these vulnerable people from being made homeless by the PSPO, and therefore the proposals fail to meet the tests set out in the Anti-Social Behaviour, Crime and Policing Act 2014.

The statutory conditions for making a PSPO have therefore not been satisfied and the proposed PSPO action will be an entirely disproportionate response to the alleged incidents of anti-social behaviour identified in the Cabinet report of 8th February 2022. In addition, in targeting people who are already statutorily homeless in that the Council considers they do not have a place where their homes can be moored, the proposed PSPO would be in breach of the Statutory Guidance issued by the Home Office on anti-social behaviour powers as updated in December 2017.

In addition, the *Anti-Social Behaviour, Crime and Policing Act 2014 ASB Powers: Statutory Guidance for Frontline Professionals* is a useful reference point by which to gauge the proposed draft order; PSPOs are dealt with at pages 47 to 57:

"Protecting the vulnerable:

- *Consideration should be given to how the use of this power might impact on the most vulnerable members of society.*
- *Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to."*

There is no evidence that the Council has considered how the use of this power might impact on the most vulnerable members of society. It will criminalise them with the consequence of subjecting them to financial penalties that either they will not be able to afford to pay or that will subject them to serious financial hardship. There is no evidence that the Council has considered the issue of displacement at all.

- *The terms are expected to be focused, proportionate and necessary.*

The legal tests focus on the impact that ASB is having on victims and communities. A PSPO can be made by the Council if it is satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:

- *has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;*
- *is, or is likely to be, persistent or continuing in nature;*
- *is, or is likely to be, unreasonable; and*
- *justifies the restrictions imposed."*

No evidence has been provided to show a detrimental effect on quality of life. It has not been shown that any behaviour is likely to be persistent or continuing or is unreasonable.

The PSPO is not intended to deprive the Bargee Travelling Community of their PRN and the ancillary right to temporarily moor for a reasonable time, which is deemed to be 24 hours before moving on. The proposal does not, by enforcement of a PSPO, lead to the conclusion that a person whose home is a boat becomes homeless or to impact on their

way of life which is to rely on the River Thames for purposes of *navigation, commerce trade and intercourse*".

It is reasonable to expect the transient moorings to be temporary in accordance with the long-standing custom and practice of what a reasonable time is, which, as explained elsewhere, 24 hours.

The Council has been monitoring the level of complaints for the past 5 years and has received a steady flow of complaints linked to the activities of the boaters or individuals who have moored for longer than 24 hours including littering of the riverbank and noise nuisance coming from the riverbank. The Council has concluded that this has arisen because of the activity of those persistently overstaying the reasonable time to moor under the PRN and the accumulation of boats due to this activity.

Over the course of the consultation 643 Strongly agreed or agreed with the proposals (Phase 1) and a further 215 comments supported the introduction of a PSPO and provided examples of the ASB associated with the moorings in Elmbridge. This is further supported by the statement from the Green Spaces Manger and photos of the mooring locations considered by this PSPO as part of the main Cabinet report.

It is important to correct the assumption that the PSPO could make 244 people homeless based on the 115 boats estimated to be moored in Elmbridge. The PSPO is only proposed to cover the 7 sites listed below, which at the last count contained 26 boats.

The proposed PSPO is intended to cover seven open spaces that the Council either owns as the relevant landowner or has control over the management of that land:

- 1) Albany Reach
- 2) Ditton Reach
- 3) City Wharf
- 4) Hurst Park Open Space
- 5) Cigarette Island Open Space
- 6) Cowey Sale Open Space
- 7) Surrey County Council's land adjacent to Hampton Court bridge

None of the above sites are formal managed mooring sites, and as such have no mooring facilities, and such facilities are difficult to accommodate at these this locations due to the nature and use of the land. 6 of the above 7 sites are open spaces. The purposes of these spaces are for pleasure use and such use are of temporary nature for members of public to enjoy.

The Council seeks to manage the temporary right to moor effectively in conjunction with the Environment Agency. Without this ability, the littering and noise nuisance complained of by those using the open spaces/parks for the purposes of peaceful enjoyment and pleasure pastimes, and those living nearby will continue to have a detrimental effect the quality of life of those in the locality.

Equality Act 2010 and welfare issues

The Council carried out an Equality Impact Assessment of the proposals on 20th October 2023 but this failed to consider that a PSPO will have a disproportionate impact on groups with protected characteristics other than race, such as disability, sex, pregnancy and maternity, and age. We dispute that there will be no disproportionate impact on groups with these protected characteristics. Boat dwellers who are disabled, elderly or pregnant will be disproportionately affected by the proposals because they are less able to move their boats to comply with the proposed PSPO, and may be moored in Elmbridge specifically because the location enables them to access health care; to get on and off their boats easily without walking along a plank or having to jump over a gap between the boat and the river bank; to access public transport within easy walking distance; or to get mobility scooters on and off the boat easily.

In addition, nowhere in the consultation does the Council assure us that having carried out welfare assessments of the boat dwellers who will be affected, it will consider the welfare needs of boat dwellers before taking steps to evict them and/or impose financial penalties under the PSPO, and will not evict and/or impose financial penalties at all if welfare needs are identified.

The Council states that it will involve Rentstart in the November 2023 consultation. Unless the involvement of Rentstart consists of providing a network of temporary moorings and/or permanent residential moorings, the people who are vulnerable to being made homeless will not have their needs met; the involvement of Rentstart implies that Bargee Travellers will be forced into bricks and mortar and/or hostels.

The Council should immediately carry out welfare assessments, in a sensitive and measured way, of all the estimated 244 people living on the boats that are to be targeted by the PSPO.

[The October 2023 Equality Impact Assessment has been published as part of the 2nd phase of the consultation.](#)

[It is recognised that a portion of those persons who are overstaying and/or persistently overstaying may have a protected characteristic and its near equivalence may be their land counterparts – Travellers, Gypsies and Roma Groups.](#)

[Unauthorised encampments on Council Land are subject to enforcement by the Council or the police as might be appropriate under the Criminal Justice and Public Order Act 1994.](#)

[Where the boaters are identified as having a protected characteristics, e.g. a Bargee Traveller, assistance from those with a protected characteristic to alert to that status would be helpful and potentially necessary so that the Council may explore in more detail what options may be open to them at the relevant time. There are a variety of users of the River Thames and it is not always possible to distinguish a Bargee Traveller, e.g., for the purposes of a welfare assessment to be undertaken.](#)

[The Council has updated its existing Environmental Enforcement Policy in this regard. It is intended to provide a level of parity with its land counterparts and to consider enforcement approaches appropriately.](#)

[The proposals for this PSPO is to cover 7 areas of land, and not the full length of the River Thames in Elmbridge and therefore this is a proportionate and measured response to address the issues raised.](#)

Risk implications and community safety implications

The Council clearly has not considered the risks of the proposed PSPO to Bargee Travellers who may be forced to move or deterred from mooring by the PSPO. Nor has it considered the safety of the itinerant boat dweller community as a whole when proposing the PSPO. We note that the Coroner has not been included in the list of consultees and the Council has not provided an explanation for this omission. The Council has not considered the risk of mass criminalisation of an entire community, which will have significant effects such as increased impoverishment and the restriction of access to employment to an entire community caused by individuals having a criminal record simply for living in their homes.

The PSPO is not intended to deter moorings altogether but to manage the activity of those overstaying or those persistently overstaying beyond the reasonable time. A Draft Environmental Enforcement Policy has been updated to consider the Guidance on River Thames: current river conditions and any welfare concerns that may be present at the relevant time.

The Coroner has not been included as a consultee to this PSPO as the draft Environmental Enforcement Policy states that the PSPO would not be enforced when:

“the Guidance on River Thames: current river conditions advise boats either not to navigate, or to find a safe mooring (on Yellow boards unpowered craft should not navigate, this might include some houseboats without engines, and on Red boards no craft should navigate.)

In these cases, the PSPO would not be enforced until river conditions return to no stream warnings.

Article 8 and Article 14

No account has been taken of the right to respect for private, family life and home under Article 8 of the European Convention on Human Rights (ECHR). The PSPO would criminalise and fine itinerant boat dwellers for the simple act of living in their homes. This is a grossly disproportionate act and is a violation of their rights to respect for their home under Article 8. The criminal fines of £100 for anyone caught mooring on the identified locations would impoverish boat dwellers, who are typically on the lowest incomes. The sanctions are grossly disproportionate to the level of any alleged offence, especially given that river banks have boats mooring on them all the time.

Article 8 referred to: Right to respect for private and family life

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The above right is a qualified right and an interference of that right may be necessary in a democratic society for a variety of reasons.

The PSPO does not threaten to remove the boat in which the Bargee Travellers live but to manage the activity of the overstaying and/or persistent overstaying and the consequences of that activity in accordance with the Anti-Social Behaviour, Crime and Policing Act 2014

as amended.

A person who is in breach of a PSPO may be issued with a Fixed Penalty Notice (FPN and the maximum that may be imposed is £100. If the FPN is paid within 14 days, the amount may be lower. The FPN is an alternative to prosecuting for the offence for breaching a PSPO. If the FPN is paid, it discharges any liability to conviction of the offence of breaching the PSPO.

Before a decision to issue a FPN or to commence with a prosecution for the offence of breaching the PSPO if the FPN is not paid, the decision maker will have regard to the draft Environment Enforcement Policy (and the CPS Code for Crown Prosecutors where a prosecution is recommended).

Article 14 referred to: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*

An Equality Impact Assessment (Oct 2023) has been published which considers the public sector equality duty.

The proposed PSPO is not an appropriate balance between the needs of those against whom the PSPO will be employed and the wider community. Please note that boat dwellers are amongst those who are "living in the locality". In failing to consider the risks to and the safety of the itinerant boat dweller community, who are temporarily or permanently also residents of Elmbridge and members of the community, the Council is discriminating against Bargee Travellers contrary to Article 14 ECHR.

The aim of socially cleansing the river of Bargee Travellers is borne out by the Council's statement in the October 2023 Equality Impact Assessment regarding returning the river bank to "24 hour leisure uses". This would remove from the river bank anyone whose boat is their home, as "leisure uses" excludes use by those whose boats are their homes; their use of moorings is not "leisure", it is domestic and thus the proposed PSPO would violate and is designed to violate their Article 8 ECHR rights.

In seeking to displace Bargee Travellers in favour of the interests of housed local residents and "24 hour leisure uses", the PSPO is discriminatory in its effect, contrary to their rights under Article 14 ECHR.

The sites to be subject to the PSPO are Open Spaces and is not sought for the whole length of the river Thames within the borough of Elmbridge. Where the boats are used as a home, this use would be contrary to the established use of Open Space for pleasure and pastimes. The Council considers that its approach is balanced and that its proposed approach is reasonable, proportionate and justified.

Accommodation Needs Assessment

Section 124 of the Housing and Planning Act 2016 places a duty upon local authorities 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". This means that Bargee Travellers and boat dwellers must now be included in the accommodation needs assessments that local authorities have a duty to carry out.

We note that Elmbridge Council contracted Opinion Research Services (ORS) to carry out a Boat Dweller Accommodation Needs Assessment which was completed on 3rd February

2022. In paragraph 64 of the Cabinet Report of 8th February 2022 the Council stated that

“without contacting the individual boat dwellers to carry out some form of assessment of housing need, it is difficult to state definitively what the impact of a potential PSPO would be in terms of duties on the local housing authority.”

Even though the Boat Dweller Accommodation Needs Assessment was carried out some 21 months before this current consultation, the Council has failed to assess what the impact of a potential PSPO would be in terms of duties on the local housing authority.

Furthermore, the Council failed to use the Boat Dweller Accommodation Needs Assessment to inform and shape planning policy in its Draft Local Plan for 2022 to 2037, published on 17th June 2022. Therefore the recommendations to provide moorings will not be implemented within the period of the Local Plan. The Draft Local Plan is completely silent on the accommodation needs of boat dwellers. The approach taken by Elmbridge Council lacks fairness, transparency and proper engagement with those most affected by this matter. It is hard to avoid the conclusion that the February 2022 Boat Dweller Accommodation Needs Assessment was deliberately withheld. This is inexcusable given that the Council was well aware of the issue three years earlier and of the need to do boater surveys where, as in the case of Elmbridge, there was a clear case for doing so. This suggests that the Council has no intention to provide moorings for boat dwellers and is simply concerned with clearing the area of Bargee Travellers altogether.

The Council states that the most recent count of vessels moored to the River Bank in Elmbridge is 116. The Boat Dweller Accommodation Needs Assessment of February 2022 claims that there is a need for “a need for 10 licensed permanent moorings” and that there are around 40 live aboard boats on the Thames through Elmbridge. The discrepancy between these two statistics is suspicious and should be investigated.

Elmbridge Council deliberately left the Boat Dweller Accommodation Needs Assessment out of the Local Plan, even though it had the opportunity to include it before the deadline. This suggests that the Council has no intention to provide moorings for boat dwellers and is simply concerned with clearing the area of Bargee Travellers altogether. This aim of socially cleansing the river is borne out by the Council’s statement in its Equality Impact Assessment of the proposals on 20th October 2023 that it aims to “restore the riverbank to 24 hour leisure uses”.

The statement in the October 2023 Equality Impact Assessment that “the proposal does not, by enforcement of a PSPO, lead to the conclusion that a person whose home is a boat becomes homeless or to impact on their way of life which is to rely on the River Thames for purposes of navigation, commerce trade and intercourse” is completely contradicted by the stated aim in the same document that the Council aims to “restore the riverbank to 24 hour leisure uses”.

Bargee Travellers need to be able to moor for at least 14 days in any location. They need mooring stay times of between 14 days and twelve weeks in order to maintain their access to employment, education for their children, and any health care that they may need. To force them to move on after 24 hours is draconian in the extreme, and is disruptive to their lives to the point of making their homes untenable, which will ultimately serve to render them homeless and destitute. The Council states in its October 2023 Equality Impact Assessment that the aim of the PSPO is to control “detrimental effect this behaviour is having on the quality of life of those in the locality”; however, the proposed PSPO will have a highly detrimental effect on the quality of life of Bargee Travellers, depriving them of access to employment, education and health care, thus reducing their quality of life to nothing.

The Council states in the same Equality Impact Assessment that “It is not considered that this will have a high impact due to the small number of locations to be subject to the proposed PSPO and the number of boats moored in these locations”. This assertion contradicts the Boat Dweller Accommodation Needs Assessment of February 2022 which found that boat dwellers need to be in the vicinity of Elmbridge:

“Boat dwellers were asked where on the river they moored most often. All 25 answered, with 16 saying they moored where they are now. Another nine moved between where they are now and other parts of the Thames nearby; Hampton, Walton, Shepperton and Kingston.” Only one cruised regularly. Another 7 travelled on the Thames to local destinations, mostly towards Windsor.”

It is clear that boat dwellers who moor in Elmbridge need to be in the borough due to their need to access employment, education, healthcare and other services and facilities including maintaining their private and family life, as they are entitled to under Article 8 ECHR.

The Cabinet Report of 8th February 2022 also states that

“The Council’s Housing Service has no recent record of approaches from owners or occupiers of houseboats in relation to actual or threatened homelessness from houseboats on local waterways and is not aware of a significant quantum of expressed housing need (in terms of those occupying said boats being on the Council’s Housing Register).”

This is hardly surprising, given that most boat dwellers wish to continue to live on their boats and do not want to be forced out of their homes into bricks and mortar. Many, especially single men, are extremely fearful of being forced to live in a hostel or a care home. Unless the Council provides temporary and permanent mooring space that genuinely meets the housing needs of boat dwellers, they will be wary of any contact with the Housing Service or with Rentstart.

Please see the NBTA Best Practice Guide for Boat Dweller Accommodation Needs Assessments under Section 124 of the Housing and Planning Act 2016 here:
<http://www.bargee-traveller.org.uk/best-practice-guide/>

As part of the preparation of the draft Local Plan, the Council produced and published a Boat Dwellers Site Assessment Paper (June 2022). This sets out the actions undertaken by the Council to seek to find opportunities for additional moorings within the borough and / or in neighbouring authorities (where the Thames also features). Despite the Council contacting relevant neighbouring authorities and the Environment Agency and Surrey County Council who own land adjacent to the River Thames, no opportunities were identified. Details of the responses received are set out in the Assessment Paper.

On the basis of the above, the Council has not identified any additional moorings within its draft Local Plan.

Nevertheless, the draft Local Plan is not silent on this matter. Point 8 of draft Policy INF6 – Rivers, states that) - new moorings or other floating structures will be supported if it complies with the following criteria:

- a) It does not harm the character, openness and views of the river, by virtue of its design and height;
- b) The visitor mooring allows use for a period of less than 24 hours;
- c) There is no interference with the recreational use of the river, riverside and navigation;

and

d) The proposal is of wider benefit to the community.

With regards to the provision of temporary moorings for a reasonable time, this is already available under section 79 of the Thames Conservancy Act 1932. The proposed PSPO is not intended to remove this provision.

The Boat Dwellers Accommodation Needs Assessment was produced for the purposes of the local plan and how applications for planning permission that involves moorings might be considered.

Consultation fails to meet minimum standards set out in law and Government Guidance

The consultation does not meet criteria in the Government Consultation Principles 2018; in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56; and in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168.

To summarise Gunning Principles, as updated, a fair and proper consultation:

- Must be at a time when proposals are still at a formative stage
- Must give sufficient reasons for any proposals to permit intelligent consideration and response
- Adequate time must be given for consideration and response
- The product of consultation must be conscientiously taken into account in finalizing any statutory proposals
- The degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identify of those with whom it is consulting
- The demand of fairness is likely to be somewhat higher when an authority contemplate depriving someone of an existing benefit or advantage than ...for a future benefit.

The Council considers that all the principles have been met but, given that the Council is responding to the representations made by the National Bargee Travellers Association, and others it considers it appropriate to give more time for an additional phase of consultation to be undertaken to present further details as raised in this response.

This has since been undertaken. The Council will be considering the Cabinet Report, that has since been drafted, on 7th February 2024 and relating appendices prior to making a decision whether or not to make a PSPO as proposed or as modified.

Insufficient and inaccurate reasons provided

The consultation violates the Government's Consultation Principles 2018 in that it provides insufficient reasons for the proposal to enable intelligent consideration and response. The evidence provided to justify the proposed PSPO is virtually non-existent. In this regard the consultation proposal is wholly inadequate.

There is no explanation of how mooring without consent might cause, per se, Anti-Social Behaviour. The consultation makes blanket allegations against an entire community, but fails to provide any evidence to support these allegations.

The Equality Impact Assessment of 20th October 2023 refers to complaints about rubbish left by boats. No further evidence is provided regarding what the rubbish is, what quantity there is, and what evidence there is that the rubbish was left by boat dwellers. There is no

explanation of how the Council has differentiated between rubbish allegedly left by boat dwellers, and rubbish left by anglers, overnight campers, or wild swimmers. It appears that the incidence of littering on the river bank has been double-counted and used to demonise both boat dwellers and those using the river bank for fishing and overnight camping. This is highly misleading. In addition, the Council has not explained what steps it has taken to ensure that there is a proper refuse collection service for boat dwellers.

The Equality Impact Assessment also refers to noise pollution by moored boats. No evidence regarding the noise levels in decibels, the type of noise, or the times of day noise pollution is heard is provided. No evidence that the noise pollution is caused by boat dwellers is provided. There is no explanation of how the Council has differentiated between noise pollution in the same river bank areas allegedly by boat dwellers, and noise pollution by anglers, overnight campers, or wild swimmers. It appears that the incidence of noise pollution on the river bank has also been double-counted and used to demonise both boat dwellers and those using the river bank for fishing and overnight camping. This is also highly misleading.

The consultation lists the number of complaints made but fails to provide any information about the number of complainants, to assist consultees to assess whether they are the action of a small number of serial complainers.

The Equality Impact Assessment of 20th October 2023 states:

"99 Complaints from local residents since 2014 have been collated to support the consideration of a PSPO:
Mooring without consent 76
Rubbish left by boats 15
Health and safety 10
Navigation 8
Pollution 9"

By listing the number of complaints received over a period of almost 10 years, this information is presented in a misleading way to make it appear that there has been an extremely high volume of complaints. This serves to misdirect consultees in favour of the proposals. It is not clear whether or not these 99 complaints over almost 10 years were made by a small handful of people. It appears that 76 of these are unfounded complaints about boaters simply exercising the right to moor inherent in the PRN. No explanation has been provided of the seriousness or otherwise of complaints about rubbish left by boats or pollution, nor of how it was determined that the pollution and rubbish were caused by boaters. No information has been provided to explain the context of complaints about navigation and health and safety.

The Council has been monitoring the level of complaints for the past 5 years and has received a steady flow of complaints linked to the activities of the boaters or individuals who have moored for longer than 24 hours including littering of the riverbank and noise nuisance coming from the riverbank. The Council has concluded that this has arisen because of the activity of those persistently overstaying the reasonable time to moor under the PRN and the accumulation of boats due to this activity.

Over the course of the consultation 643 Strongly agreed or agreed with the proposals (Phase 1) and a further 215 comments supported the introduction of a PSPO and provided examples of the ASB associated with the moorings in Elmbridge. This is further supported by the statement from the Green Spaces Manager raising concerns about the use of the green spaces bins for domestic waste from the moorings under the Cabinet report at Appendix 4. This document includes information that addresses the issues raised in the

round under this heading.

Due to the number of vessels moored at the locations considered by this PSPO there is no access to the riverbank for other users (fishing, paddleboarding) and as such it is a reasonable conclusion that the litter is associated with the vessels moored there.

Consultation violates Anti-Social Behaviour, Crime and Policing Act 2014

The consultation violates Section 72 of the Anti-Social Behaviour, Crime and Policing Act 2014 in that it fails to show a detrimental effect on quality of life because no evidence has been provided to connect the incidents of littering, health and safety, pollution and noise pollution with moored boats to support the allegations made against boat dwellers.

As set out in the Cabinet Report, the results of the consultation and the responses received have been considered. The Council is now making a recommendation that the Council is satisfied, on reasonable grounds, that the following conditions have been met in relation to the activities:

- That they are or are likely to be carried out in a public place within the Borough;
- That they have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- The effect, or likely effect of the activities is likely to be, persistent or continuing in nature;
- Is or is likely to be such as to make the activities unreasonable; and
- justifies the restrictions sought to be imposed by the order.

The Council accordingly seeks that these activities to be regulated.

No alternative options proposed

Paragraphs 28 and 41 of the Supreme Court judgement in R(Moseley) v London Borough of Haringey [2014] UKSC 56 state:

"28. But, even when the subject of the requisite consultation is limited to the preferred option, fairness may nevertheless require passing reference to be made to arguable yet discarded alternative options..."

41Nevertheless, enough must be said about realistic alternatives, and the reasons for the local authority's preferred choice, to enable the consultees to make an intelligent response in respect of the scheme on which their views are sought."

Despite identifying a number of alternative options, including "do nothing", in the 2019 Consultation, there is not even a brief reference to any possible alternatives to a PSPO in this consultation. Despite the NBTA providing alternative proposals in response to the 2019 consultation and the February 2023 consultation, none of these alternative proposals have been mentioned, even in the context that they were rejected. We again provide those alternative proposals below. The omission to provide even brief information about alternatives to a PSPO invalidates the consultation.

The 2019 report considered a number of options to manage the ongoing issue of unauthorised moorings and the impact on local communities. The consultation was not conclusive and despite a trial period engaging District Enforcement, this has not proved effective in managing unauthorised moorings and the impact of this activity (see above) especially where boats may not have a valid registration with the EA.

Alternative proposals

Instead of a PSPO, Elmbridge and Surrey Council should should work with other riparian

landowners to establish a network of temporary moorings for Bargee Travellers with durations of between two weeks and twelve weeks.

Such a network of temporary moorings should be managed by a permit system that is available only to people whose only home is their boat. Any permit system needs to be genuinely affordable, in line with the PRN, and all such moorings should include an initial free-of-charge period of 14 days. In addition the local authorities should provide facilities for boaters of potable water, rubbish disposal and chemical toilet sewage disposal.

The establishment of a residential temporary mooring permit system would not amount to a change of use of the riparian land, as the use of mooring space for temporary periods by leisure boaters also includes the boater residing on their boat for the duration of their cruise or holiday, and there would be a turnover of boats.

Any provision of additional permanent moorings should not be made by utilising existing temporary mooring sites. The removal of temporary mooring sites forces more Bargee Travellers onto permanent moorings and therefore destroys their nomadic way of life.

As part of the preparation of the draft Local Plan, the Council produced and published a Boat Dwellers Site Assessment Paper (June 2022). This set out the actions undertaken by the Council to seek to find opportunities for additional moorings within the borough and / or in neighbouring authorities (where the Thames also features). Despite the Council contacting relevant neighbouring authorities and the Environment Agency and Surrey County Council who own land adjacent to the River Thames, no opportunities were identified. Details of the responses received are set out in the Assessment Paper.

On the basis of the above, the Council has not identified any additional moorings within its draft Local Plan however, has included a draft Policy (INF-6) to allow the consideration of any future mooring application.

**National Bargee Travellers Association
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