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Elmbridge PSPO CONSULTATION DECEMBER 2023

Unauthorised moorings on River Thames

OBJECTION

Elmbridge responses highlighted in Blue.

According to the Council website unauthorised moorings are to be included in a proposed PSPO for the following reason:

In recent years, and with greater enforcement imposed further along the River Thames in Kingston and Richmond leading to the displacement of boats into Surrey boroughs, there has been an increase in the number of boats moored without permission in Elmbridge. We have been working with partners and the Environment Agency to seek a long-term solution to unauthorised moorings in the borough. Unregistered boats moored without permission on Elmbridge land are still very challenging to move on in areas highlighted on the map shown on the consultation web page.

PSPO are designed to address anti-social behaviour. According to the draft PSPO order action is required to control:

'The activities of unauthorised mooring(s) and the associated littering, noise and preventing others from temporary mooring for 24 hours in association with the Public Right of Navigation of the River Thames in a Restricted Area has a detrimental effect on the quality of life of this in the locality, and That the effect of likely effect, of the activities is, or is likely to be, of a persistent or continuing nature and accordingly, these activities are unreasonable and justify the restrictions impose by the Order'.

From reading the July 2023 committee report and responses received, I am not convinced that those supporting the PSPO understood which moorings are the subject of this PSPO and the reasons behind this. The Council does not appear to be supporting concerns expressed about sewage, pollution, land grabbing, loss of access to the riverbank and the like. There is no evidence to show that these concerns are relevant to these moorings and that some of these issues would not also arise in association with short stay moorings by boats in navigation on the Thames.

With so much of the river bank being used for the mooring of boats, I find it astonishing to learn that unauthorised moorings are associated with activities, littering and noise so detrimental to the quality of life of the locality and different to other moorings that there is a need to impose the proposed restrictions. Determining whether these moorings are detrimental and unreasonable requires careful consideration especially given that it can be hard to differentiate and distinguish an unauthorised mooring from an authorised mooring. I can appreciate that long stay moorings may prevent others from mooring on a temporary basis but where is the evidence that there is a need for temporary moorings for 24 hour stops and where is the evidence that these moorings result in issues with littering and noise that can not be controlled by other legislation? Where is the evidence there is a need for temporary moorings on all these river frontages in Elmbridge and are the needs of recreational boaters who have permanent homes really more pressing than those who live on our waterways? How many pleasure boats are navigating the river over winter and can we justify making folks homeless so that their needs can be accommodated? Could lesser steps be more appropriate with a balance between long stay moorings for those who are vulnerable, have residential needs and would otherwise be homeless and some short stay moorings for those who are in navigation and do not want to pay to stop in marinas. Are temporary moorings and the constant movement of boats on/off these moorings not also likely to give rise to similar activities, littering and noise concerns? Is there not a danger that those who have complained about the long stay mooring of boats on the Thames will also complain about the use of these frontages for short stay moorings with all their associated activity and constant change of occupancy?

It really is not clear what behaviour this PSPO is tackling and how or why boats moored on a river for anything longer than 24 hours can be regarded as anti social behaviour. Elsewhere the Council has served planning enforcement notices alleging that the mooring of boats on the river is a material change in use of land. Why on other parts of the river, on land owned by the Council, are unauthorised moorings regarded differently ie as anti -social?

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.

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.

Why, if there is a clear need for more moorings for both long stay and short stay purposes, is the Council not addressing this need and making provision with proper facilities to embrace this? The 2022 Boat Dwellers Assessment only identified a need for just 10 moorings yet the Council recently confirmed that there are an estimated 116 boats moored without consent in the Elmbridge area with 26 currently moored on Elmbridge owned land. Not only is this a significant increase over the 50-80 boats identified in mid -2019, it falls well short of the Council's own need assessment published in 2022 for residential moorings. I have seen no study which quantifies the need for any other moorings.

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.

The proposed measures seem more onerous than those applied by the EA and seem, on the face of it, to be wholly unreasonable. Where else are visitors to an area limited to a one night stay? How are those who are living on board their boats expected to moor up to make appointments or carry out repairs to their boats?

The aim of the draft 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.

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).

The consultation exercise does not appear to have identified

- a) How many boats are actually moored on the river in Elmbridge, including islands and how many of these are authorised/ unauthorised. Not knowing this it is difficult to understand the scale/ extent of the problem of boats moored without consent.

The report identifies that it is approximated that there are 26 boats currently moored to the 7 locations included in the proposed PSPO:

Ditton Reach\ City Wharf – 0

Albay reach - 0

Hampton Court Bridge\Cigarette Island –16

Hurst Park- 10

Cowey Sale – 0

- b) How these unauthorised boats are being used. The risk assessment tells us that a small portion of persons who are overstaying and /or persistently overstaying may also have a protected characteristic eg a Bargee Traveller and welfare considerations are important. But we are not told how many boats this concerns and why if the occupants have special considerations this has not been taken into consideration already. It does not read as though the Council has done its homework. Nor are we told how many of these unauthorised boats (if any) are occupied by persons who are homeless ie have no where lawful to live in their boats. I remain unconvinced that the Council has carried out due diligence and properly investigated this matter since the last consultation exercise. Without this information it is impossible to know if a PSPO a proportionate means of addressing this issue? I can find no consideration of the positive benefits of moorings designed to address the homeless situation in this area. The Council commissioned a Boat Dwellers need assessment in 2022 and should be fully aware of these issues even if the assessment fails to provide any plan or list to identify where residential moorings are located and where the need for more residential moorings has arisen. We do know that the Council carried out an inadequate assessment of potential sites to meet the need identified. It was left to the last minute. It failed to consider private moorings and the potential of unregistered river frontage. It failed to find any suitable moorings which is hardly surprising given how little time the Council left itself to do this assessment prior to submitting a draft Local Plan which was prepared without this information. Now we learn that there are some 26 unauthorised long stay moorings on council owned land. If boaters consider these sites suitable for long stay moorings and the Council is content to allow them to be used for short stay moorings, why are they not considered suitable to address the need identified in the 2022 need assessment?

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 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 problem of unregistered boats is surely a matter for the EA not the Council. It is difficult to see how a PSPO will prevent or reduce the number of unregistered boats in Elmbridge or elsewhere on the Thames.

EBC is the landowner in the case of the 7 locations considered as part of this PSPO consultation. The Council has been working closely with the EA to encourage them to manage the moorings effectively on their own land.

The draft PSPO is not intended to address the lack of registration as that is correctly a matter for the EA.

Elmbridge Council clearly own a relatively small section of the Thames river bank in the borough. The introduction of this PSPO will simply displace boats moored on Council owned land and they will find other parts of the river bank to moor on. There could be unintended consequences of this action. This is not a solution, it is simply shifting what ever problem the Council has with these boats to another part of the River and other districts. This is not an appropriate or proportionate response to the needs of those who choose to live on their boats or do so because Councils generally have failed to ensure a supply of decent and available affordable/ social housing.

The EA have confirmed that they have the powers to continue to manage their own land effectively. EBC have sought to use a number of other powers including possession hearings, and use of a 3rd party contractor to enforce overstaying boats etc (use wording from NBTAs reply)

In short I am not convinced this is an appropriate response or that it has been properly and carefully considered by the Council. The Council should be able to address matters of littering and noise with other legislation. This consultation has only served to draw attention to the FAILURE of Elmbridge Council to take appropriate and timely action to identify and address the need for more moorings on the Thames as part of its Local Plan and as a requirement of housing legislation.

I urge the Council to re think its approach to this matter and properly quantify and identify the issues so that any response is proportionate, properly reasoned and addresses the real issues.

4.12.2023