

# Cabinet

06 November 2019



<b>Title</b>	Consultation responses on unauthorised Mooring and a proposed Public Space Protection Order		
<b>Purpose of the report</b>	To note		
<b>Report Author</b>	Michael Graham, Head of Corporate Governance Jackie Taylor, Group Head of Neighbourhood Services		
<b>Cabinet Member</b>	Councillor Richard Barratt	<b>Confidential</b>	No
<b>Corporate Priority</b>	Clean and Safe Environment		
<b>Recommendations</b>	Members to note the consultation responses. That the results of the initial stakeholder consultation are considered with Elmbridge BC and Runnymede BC to propose next steps and thereafter to report back to Cabinet.		
<b>Reason for Recommendation</b>	To engage with the community on a proposed change to enforcement on the River Thames. To work in partnership with other councils to achieve a consistent approach to mooring enforcement in this area.		

## 1. Key issues

- 1.1 In July 2019, Cabinet approved a consultation with the public on the issue of problem moorings on the River Thames and whether further enforcement action was warranted. We also sought views from the public about the form of future enforcement measures introducing the possibility of introducing a Public Space Protection Order for the River Thames in collaboration with Elmbridge BC and Runnymede BC.
- 1.2 This report now gives an update to members on the consultation responses.
- 1.3 Officers now propose to consider the responses to this consultation in further detail with the other councils and the Environment Agency. It is hoped that a comprehensive proposal for better targeted enforcement can be brought forward this autumn to be in place for next summer.

## 2. Background

- 2.1 Spelthorne, Elmbridge and Runnymede Borough Councils are considering options along a specified area of the River Thames due to the unreasonable and persistent nature of mooring without consent which is having a detrimental effect on those living in the locality.
- 2.2 Spelthorne BC has established a River Thames Task Group which is charged with overseeing improvements along the River for the better economic, environmental and social well-being of residents, businesses and visitors.

Consulting with other agencies and the public and introducing this type of initiative is part of the Task Group's work. The Task Group (which is non-political and has community representation) is chaired by Cllr Mrs Vivienne Leighton.

- 2.3 In recent years, there has been an increase in the number of boats moored without permission along the River Thames. With an increase in house prices some people are seeking a cheaper solution to housing and buy live aboard boats as their permanent residences. There is also a community of regular river users who go about their lives on the river as a way of life.
- 2.4 The problem has grown recently with increased enforcement in Kingston and Richmond displacing boats into Surrey, and an increase in the number of complaints received in all three Surrey boroughs. Further displacement is anticipated in future years as regular mooring areas and marinas within London are developed.
- 2.5 The Surrey boroughs have also noted an increase in associated anti-social behaviour in some areas where moorings have been established.
- 2.6 The Environment Agency (EA) is the navigation authority for the non-tidal River Thames from Cricklade in Wiltshire to the tidal boundary at Teddington in Middlesex, passing through the Boroughs of Spelthorne, Elmbridge and Runnymede. The EA have the responsibility to manage the waterway and ensure that it can be used safely by as many people as possible.
- 2.7 The EA and other landowners provide sort stay or public visitor mooring sites to encourage passing boats to stop for short periods to enjoy the peace of the waterside and use local amenities, these can prove very popular especially in town centres or close to transport links.

### **3. Evidence and experience**

- 3.1 Each of the three Boroughs, while different in scale have been facing increasing problems associated with unauthorised moorings as summarised in the initial report. It is not necessary to repeat these concerns in this report. Members are directed to the July Cabinet papers for further information.
- 3.2 The consultation response in Spelthorne highlighted the following issues from two substantial responses. Officers have added their observations on the issues raised. In addition an analysis of the responses received via the website survey is attached as Appendix 1.

### **4. Issues raised from Community Law Project and the National Bargee Traveller Association.**

- 4.1 **A flawed consultation** - it was suggested that this consultation itself was flawed and thus challengeable. It was also suggested that sufficient time was given for people to respond to this consultation.
- 4.2 This consultation was an early engagement with stakeholders to determine the support for any of the options, or other suggestions for dealing with the current issues. We are aware of the need for formal public consultation to consider the introduction of a PSPO. If a decision is taken to consider a PSPO at a later stage then a further, full public stakeholder consultation will be undertaken setting out exactly what the PSPO proposes and in what geographical areas.

- 4.3 **The evidence provided is paltry and, indeed, virtually non-existent** – it was suggested that not enough detail was provided about Spelthorne's figures and data.
- 4.4 The purpose of the consultation was to present such data as the Council had and to seek views about it from the public to ascertain the context in which this issue should be viewed. As is mentioned above, this consultation was not presented with a view to implementing a particular solution – a number of issues and possible ways of dealing with this issues were canvassed. This has been a useful consultation exercise as it has allowed a number of stakeholders to express their opinions on the proposal.
- 4.5 **The paltry evidence provided fails to show a detrimental effect on quality of life.**
- 4.6 There is some evidence from the consultation responses that there is a detrimental effect on the quality of life for those living on or near the river and those visiting the River. Whether the extent of this is sufficient to consider new powers will now be considered by officers in partnership with others councils and a further report presented to members.
- 4.7 **It is not shown that any behaviour is likely to be persistent or continuing or is unreasonable.**
- 4.8 There is some evidence from the consultation responses that the behaviour is persistent, continuing and unreasonable. Whether the extent of this is sufficient to consider new powers will now be considered by officers in partnership with others councils and a further report presented to members.
- 4.9 **This proposed PSPO is mainly targeted at those boat dwellers who do not have a licence. This may be through no fault of their own and, in any event, is not by itself an instance of ASB.**
- 4.10 A specific PSPO was not proposed in the consultation. It was provided as one of the possible solutions. An example PSPO was attached to the Spelthorne consultation to illustrate to stakeholders how such a power might be interpreted or utilised. None of the powers mentioned in the July report were particularly seeking to address the issue of unlicensed boats. This is an EA function and the EA are not party to this consultation and the councils would have no powers to enforce EA powers. It may be that there is an overlap between the unlicensed boats and the boats causing anti-social behaviour – this will be considered further by the councils with the EA. The purpose of the councils in launching this consultation was to examine the issue anti-social behaviour, its nature and its extent and how it is viewed by the public.
- 4.11 **No account has been taken of the right to respect for private, family life and home under Article 8 of the Human Rights Act 1998. This is not even referred to.**
- 4.12 The Council always considers Human Rights Act 1998 in all of its functions. The organisation making this response has not suggested how Article 8 is engaged by this consultation or the proposal to tackle anti-social behaviour. The Council is open minded to the possibility of Article 8 being engaged and if further proposals are brought to Cabinet then this will be considered in more detail and in the context of whatever is proposed.

- 4.13 **Nor is it clear that this consultation has been properly targeted to boat dwellers. What steps have been taken to ensure that this community are consulted?**
- 4.14 The consultation was brought to the attention of a wide range of river users and residents. The consultation was also brought to the attention of the National Barge Travellers Association who responded in detail and have raised the following points:
- 4.15 **A proposed PSPO could interfere with the Public Right of navigation on the Thames.**
- 4.16 Were the Council minded to introduce a PSPO then it would be mindful of the rights of river users in the ordinary course of navigation and to moor in accordance with this right. Officers will give consideration to those instances where mooring looks to be a settled pattern of habitation rather than as a result of ordinary navigation. Members will be advised further.
- 4.17 **A proposed could be ultra vires if it seeks to undermine the lawful rights of boaters and usurp the powers of the navigation authority.**
- 4.18 Nothing has thus far been suggested which would undermine the lawful rights of boaters, nor was any proposal submitted to undermine the EA. The consultation sought advice on the instances where boaters are unlawfully moored and creating anti-social behaviour. The purpose of the consultation is to consider the appropriate ways of dealing with the consequences of unlawful moorings.
- 4.19 **There is nothing inherently anti-social in mooring a boat that is your home on a river bank.**
- 4.20 This is agreed. However, the evidence suggests that there is a strong correlation between unlawfully moored boats and various forms of anti-social behaviour.
- 4.21 **Mooring without the consent of the landowner clearly does not satisfy the statutory definition of Anti-Social Behaviour. The simple act of mooring a boat on a river bank does not of its nature have a detrimental effect on quality of life.**
- 4.22 The evidence from the community seems to suggest that mooring without consent is also correlated with anti-social behaviour and does have a detrimental effect on the quality of life. The Council is entitled to deal with anti-social behaviour from people whether they are in a place with consent or otherwise. Officers will consider the detriment suffered by the community.
- 4.23 **A PSPO would violate the rights of boat dwellers to respect for their homes under Article 8 of the European Convention on Human Rights. 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.**
- 4.24 The Council will always abide by the Human Rights Act 1998. If any enforcement is proposed or new restrictions are introduced then the Council will ensure that these are in accordance with the law and are 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.

- 4.25 **Visual amenity cannot be described as anti-social and the report provided contains insufficient evidence to conclude that the activities detailed within it do indeed have a significant detrimental effect on quality of life.**
- 4.26 The matter was put to consultation for advice from the public and river user groups. River users have provided their evidence on this. See Appendix 1 for examples. Whether this is justification for further enforcement is a matter which officers will now consider in conjunction with the other councils.
- 4.27 **The scale and scope of the PSPO are disproportionate to the perceived problems.**
- 4.28 It is important to reiterate that this was not a formal consultation on a PSPO. It was a wide ranging consultation to check with stakeholders about the nature and extent of the problem and explore whether further enforcement may be appropriate. If officers recommend a PSPO after further consultation with the other councils and the EA then it would of course be designed to be proportionate to the actual problems.
- 4.29 **In seeking to displace Bargee Travellers in favour of what the councils refer to as "genuine leisure cruisers" the PSPO is discriminatory in its effect**
- 4.30 It is not suggested how the Council is discriminating. It should be noted that the consultation did not suggest that leisure cruisers who litter or pollute the river would be exempt from enforcement action. The main focus of the consultation was the growth of informal mooring, but this does not mean that any new enforcement policy will be confined to this group. The Council will look at the evidence to see where the majority of problems arise and how to deal effectively with those issues.
- 4.31 **The PSPO will cause widespread homelessness amongst the Bargee Traveller community.**
- 4.32 This is an assertion which has not been justified or evidenced. It does not logically follow that enforcement against anti-social behaviour will lead to homelessness. In any event the Council is alert to its homelessness prevention duties and these were noted in the original report.
- 4.33 **The number of boats suggests a total population of between 315 and 504 adults and children, a proportion of whom will be elderly, disabled, pregnant, children of school age or people who are vulnerable for other reasons. The consultation has failed to propose any measures that would protect these vulnerable people, and therefore the proposals fail to meet the tests set out in the Anti-social Behaviour, Crime and Policing Act 2014**
- 4.34 These assertions are not evidenced and do not at the present time accord with the Council's perception of the scale of the issue. Officers will consider whether further survey work is necessary. It is not accepted that elderly, disabled, pregnant women or school age children of boaters have any more right to engage in anti-social behaviour than those who live on land. If the Council proposes new enforcement powers it will also propose an

enforcement policy to deal with vulnerable groups including welfare assessments for those people who may have nowhere else to go.

- 4.35 **In addition, nowhere in the consultation do the councils propose carrying out welfare assessments of these boat dwellers, given that local authorities are required to consider the welfare needs of Travellers on land before taking steps to evict them, and not to evict at all if welfare needs are identified.**
- 4.36 Nowhere in the consultation was it proposed to evict boaters, so this comment does not appear to be relevant.
- 4.37 **Banning or restricting mooring with the 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.**
- 4.38 There is no suggestion in the Council's consultation or the July report that boaters would be forced to navigate in unsafe river conditions. The Council is aware of the usual warnings when it is safe for boaters to move away from moorings. Such considerations have been taken into account in previous enforcement action.
- 4.39 **Option two regarding bylaws - the text of any bylaw proposal has not been provided.**
- 4.40 The Council already has a mooring bylaw and it does not subvert the right to moor pursuant to the public right of navigation on the River Thames.
- 4.41 **Bylaws with strict 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.**
- 4.42 The bylaws have been in operation since at least 1992 and there has been no case of boats sinking or any loss of life by requesting overstayers to move. They are asked to move on when it is safe to do so.
- 4.43 **In seeking to curtail mooring for a reasonable period of time any such bylaws will be seeking to rescind the public right of navigation and thus seeking to rescind Article 29 of the Magna Carta of 1215.**
- 4.44 This is disputed. Existing bylaws are already in effect and prosecutions have been agreed by the Courts.
- 4.45 **Option three managed moorings - the suggestion is made that boats will be required to move when the river or weather conditions are unsafe.**
- 4.46 The suggestion does not follow from the Council's consultation.
- 4.47 **It is suggested that private enforcement companies are incentivised to bully and harass boaters to pay a steep £100 per day mooring fines because this is how they make their profit.**
- 4.48 This does not follow from the Council's consultation and is unhelpful supposition. The level of mooring fee has not been suggested nor has the identity of a civil enforcement partner. Comments have been made about one company which undertakes work in this field. It does not follow that this is the scheme which the Council would propose to bring into effect if this option were followed.

- 4.49 **The imposition of daily charges of £100 violates the right to more for a reasonable time within the public right to navigate which is codified in section 79 of the Thames Conservancy Act 1932. This action is unlawful.**
- 4.50 The council has made comment above about the public right of navigation and this will be considered with the Environment Agency.
- 4.51 **Comments have been made on the debt recovery process.**
- 4.52 Such comments are irrelevant at this point. The question which has been posed in the consultation is whether a civil scheme would help address the issues which have been identified in the consultation.
- 4.53 **The Do Nothing Option - do nothing is the option which the NBTA favours.**
- 4.54 The status quo is unsatisfactory for other stakeholders. The analysis of the consultation shows that other individuals are suffering a detriment to their quality of life which is persistent and continuing. Unless the council can remedy this situation in some way then “do nothing” does not appear to be an attractive solution.
- 4.55 **Alternative proposals NBT a favours a network of temporary moorings for bargee travellers with durations of between two weeks and twelve weeks. These moorings should be managed by a permit system which is only available to people whose only home is their boat. The permit system needs to be genuinely affordable in line with the public right of navigation. All such moorings should include an initial free of charge 14 days. In addition the local authority should provide facilities for boaters for potable water, rubbish disposal and chemical toilet sewage disposal. The provision of additional permanent moorings should not be made by utilising existing mooring sites as this will force more bargee travellers under permanent moorings and therefore destroy their nomadic way of life.**
- 4.56 No suggestion has been made as to where these sites could be provided or how they will be paid for. Although this is recognised as an attractive proposition for boaters it would require all the local authorities to devote scarce public resources to such a proposal. Members will therefore consider this in accordance with their other priorities and guide officers as whether this is an area they wish to consider further.
- 4.57 **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 places on inland waterways where houseboats can be moored.**
- 4.58 Spelthorne commissioned consultants ORS to undertake a Gypsy and Traveller Accommodation Assessment. The fieldwork for the study was completed between December 2016 and January 2017 and the report published in April 2018. This duty under the Housing and Planning Act is recognised in paragraph 3.32 and footnote 8 of their report. An assessment of need for Travellers that do not meet the planning definition can be found in Appendix C of their report.

## **5. Options**

- 5.1 There still appear to be four options at this time which were discussed in the original report.
- (a) Public Space Protection Order
  - (b) Undertake a Review of Byelaws
  - (c) Implement a managed moorings project
  - (d) Do nothing
- 5.2 In addition the NBTA recommend an increase in council provided facilities for boaters – including free of charge facilities. Interestingly, they have not suggested how these facilities can be identified, provided or paid for.
- 5.3 Officers will now liaise with the other local authorities and the EA to recommend a way forward.
- 5.4 The other issue which all three councils need to consider is consistency of any future enforcement. Enforcement effort needs to be (a) policy driven (b) visible and (c) consistent. However the councils will need to identify the nature and extent of the enforcement which can be undertake in their area and also how this is to be paid for.

## **6. Equality Impact Assessment**

- 6.1 The Council must take care to ensure compliance with the Public Sector Equality Duty under the Equality Act 2010. A full equalities impact assessment will be carried out as part of the next stages. Information to assist with this was collected in the initial consultation. This will help assist if further consultation is required once a preferred option is known.

## **7. Risk Implications**

- 7.1 No further risks are identified at this point.

## **8. Financial implications**

- 8.1 There are no direct financial implications at this stage.

## **9. Environmental implications**

- 9.1 Any controls for unauthorised moorings will assist police and council colleagues in maintaining good public order and thereby supporting the environmental and economic sustainability of Spelthorne, Elmbridge and Runnymede and the quality of life and social well-being for all river users and nearby residents.

## **10. Legal implications**

- 10.1 There are a number of legal issues raised by the different options. These were raised in the initial report. Some other issues have been raised in this report. Once a further option is proposed then the legal implications will be further reviewed and reported to members.

### **Background papers:**

- (a) Response from Community Law Project
- (b) Response from National Bargee Travellers Association

### **Appendix: Analysis of Consultation Responses**