

foreshore up to the mean high water mark. There is no right to moor on land above the mean high water mark.

Permitted Mooring Areas and Mooring Times

Because the public right of navigation does not extend to mooring on privately owned riverbanks, it is submitted that the effect of the Council's byelaws will actually enhance and benefit the public right of navigation.

As a riparian owner of the land, Richmond Council has the right to refuse permission to anyone wishing to moor on any of its land. Currently, the Council only permits boats to moor on its land at one site, namely the car park adjacent to Bell Hill Recreation Ground where boats may remain for 24 hours (between Points 5 and 6 on Plan 3). This is one of the areas where [REDACTED] argues that 24 hour mooring shouldn't be permitted under the proposed byelaws. The Council does not permit any mooring on any other land under its ownership or management.

By introducing the proposed byelaws the Council will expressly identify areas of land where 24 hour mooring will now be permitted and will tolerate mooring for 1 hour periods on all the other stretches under its ownership or control. Therefore, under the proposed byelaws some degree of mooring will be permitted on all riverbanks owned or managed by the Council. This will provide additional areas for boaters to stop and moor up to the riverbanks temporarily during the course of navigation.

It is noted that [REDACTED] argues that a period of 1 hour is too short, but does not argue that 24 hours is insufficient.

As previously explained (please see letter dated 10 March 2014 on page 1 and letter dated 3 April 2014 on page 4), most of the sites where mooring will be permitted for only 1 hour are not suitable for mooring due to the nature of the river and riverbank, or lack of facilities. This is expressly acknowledged by [REDACTED] in his email sent at 16:51 on 5 November 2014 when he refers to "wilderness mooring." The assertion by [REDACTED] that there is a "glut of mooring available" is simply a reference to these inappropriate sites where the Council wishes to preserve the environmental and amenity value of these semi-rural areas of land.

[REDACTED] argues that mooring should be prohibited at these sites because those stretches of water are used by canoe, skiff, and other clubs. Were mooring to be completely prohibited in these areas, as suggested by [REDACTED] it would also prevent any canoe or skiff user from also using the riverbanks to stop temporarily. Furthermore, a short period of only 1 hour is unlikely to significantly interfere with other vessels using the River.

The areas identified for 24 hour mooring are adjacent to local parks, which will encourage authorised and appropriate use of these areas. The Council wishes to promote these spots where pleasure boaters can stop for 24 hours in a pleasant and appropriate environment with access to local shops.

The combination of 1 hour and 24 hour mooring and the sites chosen for each permitted type is considered by the Council to achieve the optimum balance between the competing needs of various factors and interested groups including:

- Environmental and ecological factors relating to the conservation of the riverbanks;
- Itinerant boat dwellers and those undertaking a journey on the river who wish to moor somewhere overnight or temporarily to access local facilities or services, before continuing with their journey;
- Ensuring there is movement of vessels to ensure every user can find a spot to stop briefly;
- Ensuring that boats do exercise their public right of navigation and do not abuse the riverbanks and prevent others from accessing the riverside;
- To ensure fishermen can gain access to the riverbanks;
- To ensure that day users can gain access to the riverbanks to stop briefly;
- To prevent abuse of the riverbanks from people using them to avoid paying for a permanent mooring at an authorised and licenced location.

The byelaws will apply to all land owned or managed by the council to ensure that there is even regulation of mooring throughout the Borough and to avoid a concentration of boats from being moved from one area in the Borough to another.

The publicity and enforcement of the byelaws have also been previously explained in the Council's letter dated 10 March 2014 on pages 2 to 3.

Emergencies, Tides and Floods

The NBTA and [REDACTED] argue that the byelaws do not make allowances for boats during times of flood, in emergencies, or waiting for the period between tides.

With respect to the tidal issue, 4 of the 6 areas where 24 hour mooring is permitted are located on the tidal part of the River.

In any event the byelaws do take account of emergency situations or cases where boats need to stay longer than the permitted 1 hour or 24 hour periods. The Byelaws expressly provide for emergency situations and during floods, by extending the 1 hour period to 24 hours during an emergency and expressly permitting the Council to extend the mooring beyond these periods if written permission is obtained from the Council. Byelaws 7 and 8 have been included specifically to deal with these situations. The ability to impose conditions will enable the Council to ensure that the boats do subsequently move once the flood or other situation subsides (for example, permission could be granted permitting the boat to remain moored to the land until the red boards have been taken down with a requirement that a boat is required to leave within a specified period following the removal of the red boards).

Homelessness, Human Rights and Equality Act 2010

3 of the objectors state that confirmation of the byelaws will lead to evictions and homelessness which will impact upon human rights. The Council has previously addressed

these issues which were also raised by the NBTA during the 2012 consultation process (please see page 9 of the Application for Provisional Approval). It is submitted that residents of any of the boats would not be rendered homeless as the breach of the byelaws is an offence which is punishable by way of a fine only. Therefore, a breach of the proposed byelaw will not result in any loss of their homes.

The boats currently moored to the land proposed to be controlled by the byelaw are there without licence or permission of the Council and are therefore trespassers. Whilst the Council can commence action in the County Court to recover possession of the land, this would result in the repossession of boats should they fail to comply with a possession order which will result in them being made homeless if the boat is residentially occupied as their sole residence. The byelaws therefore have a potentially less draconian impact than the alternative civil procedure.

Furthermore, itinerant boat dwellers exercising the public right of navigation will not be affected as they will now have express lawful permission to moor on the Council's land temporarily (where they do not currently enjoy any such rights) before continuing with their journey.

The Council notes that the NBTA argues that itinerant boat dwellers have protected characteristics and refers to a letter dated 29 April 2009 from your Department in which the NBTA wrongly allege that it "confirmed that itinerant boat dwellers fall within the demographic grouping of traveller". The Council notes that paragraph 4 of the letter, whilst not excluding an itinerant boat dweller from that definition notes that "each case would need to be considered on its merits taking account of the individual circumstances that apply and, ultimately, it would be for the courts to determine whether a specific individual or family should be treated as Gypsies or Travellers".

Furthermore, the Council would again refer to the decision in R (on the application of Nick Brown) v Canal Trust [2012] EWHC 3133 (Admin) in which the same argument was also raised by [REDACTED] (in his personal capacity rather than on behalf of the NBTA). [REDACTED] held, at paragraph 65 that "I accept that the choice made by the Claimant is one which is, for him, a matter of considerable importance. However, his suggestion that choosing to live his life on a boat amounts to a genuine philosophical belief within the meaning of the Equality Act is, in my judgment, without merit."

The Council has, nevertheless, carried out an Equality Impact Assessment (copy enclosed). The initial assessment was carried out and drafted on 9 August 2013 and reviewed and approved on 9 December 2014 following receipt and consideration of the objections following advertisement of the byelaws.

Consultation

The Council's consultation process carried out in 2012 is set out on pages 5 to 6 of the Application for Provisional Approval. As the Department will be aware, the Council consulted with both the Environment Agency and the Port of London Authority and made amendments to the draft byelaws following discussions with these bodies.

Following the sealing of the proposed byelaws, these were advertised through a Notice published in the 26 September 2014 edition of the Richmond and Twickenham times and published on the Council's website with a complete copy of the proposed byelaws available online for inspection and a hardcopy made available for public inspection at the Council's offices.

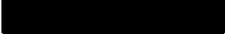
Conclusions

Contrary to the objections raised, the proposed byelaws will enhance and add to the public right of navigation on the River Thames as it flows through the London Borough of Richmond.

Currently mooring is only permitted on one small of area for 24 hours. Mooring on all other parcels of land is done so without licence or permission of the Council.

The proposed byelaws will expressly provide for a system of permitted mooring on all land owned or managed by the Council.

Yours faithfully


for Assistant Director Corporate Governance