

Committee: Cabinet

Date of meeting: 5 June 2019

| | |
|------------------------------------|---|
| Subject: | Unauthorised moorings |
| Lead Officer: | Head of Leisure and Cultural Services |
| Portfolio Holder: | Portfolio Holder for Leisure and Culture and Portfolio Holder for Community and Corporate Development |
| Link to Council Priorities: | Character and Environment, Quality Services, Community Wellbeing |
| Exempt information: | None |
| Delegated status: | For resolution |
| Key decision: | Yes |

Executive Summary:

This report seeks approval to commence stakeholder consultation on a range of options to seek a long-term solution to manage the ongoing issues of mooring without consent as outlined in the report.

Elmbridge, Spelthorne and Runnymede Borough Councils are considering options along the 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.

Recommendation: that

- (a) Members support the proposed consultation on approaches to manage mooring without consent;**
- (b) the results of the initial stakeholder consultation are reported back to each Boroughs Cabinet/Committee once the consultation period has closed to agree next steps; and**
- (c) managed moorings are trialled for a period from Hampton Court Bridge to Surbiton on Elmbridge owned land.**

REPORT:

- 1. Background**
2. 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 buying 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.
3. 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 boroughs. Further displacement is anticipated in future years as regular mooring areas and marinas within London are developed.

4. Boroughs have also noted an increase in associated anti-social behaviour in some areas where moorings have been established.
5. **River Thames mooring**
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 Elmbridge, Runnymede and Spelthorne. The EA have the responsibility to manage the waterway and ensure that it can be used safely by as many people as possible.
7. The EA and other landowners provide short stay 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 provide very popular especially in town centres or close to transport links.
8. Some sites along the Thames have taken the decision to charge, either for mooring at any time, or after an initial free period. Signage will usually show the charges payable and by mooring you are agreeing to pay them. Local examples of this include Chertsey Bridge Ground where moorings are offered for 24 hours only, with no return in 48 hours. No fees currently apply and there is evidence that the moorings are misused with some vessels are regularly staying well in excess of the allowed time. Many of these vessels appear to be repeat offenders taking up space which could have been used by genuine leisure cruisers.
9. There are also many less formal areas along the Thames (e.g. farm land) where boats can moor however most of this land is private, and boats are encouraged not to moor on private land, and where no mooring signs are displayed.
10. Within the Public Right of Navigation there is deemed a right for boat owners to stop on land, subject to the necessary landowner's consent, for a reasonable period. This follows the Environment Agency's policy that 24 hours is considered a reasonable time within normal navigation unless signage states otherwise. Boats are entitled to stay for longer however, provided they have the landowner's consent to do so.
11. For boats who wish to moor for longer periods, or permanent mooring bases, owners must have a proper base mooring (i.e. somewhere to put your boat when you are not cruising, such as a marina berth). Owners who wish to live aboard a boat as a permanent residence need to have an approved residential mooring.

12. All vessels on Environment Agency waterways must be registered. A vessel includes not only boats such as narrowboats, cruisers and barges, but also unpowered house boats, canoes and rowing skiffs.
13. **Evidence and experience**
14. Each of the 3 Boroughs, while different in scale have been facing increasing problem associated with unauthorised moorings as summarised below:
15. Elmbridge
16. Elmbridge has in the region of 50 to 80 boats moored along the River Thames without consent between the boundary with the London Borough of Kingston at Surbiton\ Thames Ditton and Weybridge where the river leaves the Borough. At the time of writing, only a handful of these boats are currently moored on Elmbridge land (Cigarette Island) and the remainder on a mixture of private and public landowners.
17. In some areas, i.e. Cherry Orchard Gardens, Molesey, a large community of boats have built up, and regular refuse collection has had to be introduced to manage the refuse generated from the Boats. This was recently featured on the BBC1 show, Inside out (11 Feb 2019).
18. The Borough has recorded 89 complaints linked to anti social behaviour, the main issues being
 - Mooring without consent (74)
 - Rubbish left by boats (15)
 - Health and safety (9)
 - Navigation of the river (8)
 - Pollution (9)
19. Surrey Police (Elmbridge) have also recorded 20 incidents involving illegally moored boats during 2018. Incidents include anti social behaviour, burglary and altercations between boat users and local residents.
20. A dedicated web page has been produced and updated regularly with partners to inform residents and Ward Councillors of the action being taken.
21. Runnymede
22. Runnymede has noted an increase in boats overstaying at moorings provided at its parks and open spaces, in particular those at Chertsey Meads and at Chertsey Bridge Ground. There is concern that as displacement from other moorings takes place areas of river bank at Runnymede Pleasure Grounds and areas of Runnymede Borough Council owned land between Staines Bridge and the borough boundary at Runnymede Meadows may become vulnerable to an increased amount of

unauthorised moorers.

23. In 2018 Runnymede issued the EA guidance and a warning letter to approximately 20 vessels. Runnymede had three persistent over staying moorers that were referred to the Council's legal team for action. One of the three matters required a pre-action letter and then moved on. Claims for possession of property (trespassers) were issues against the two other over stayers in November 2018. One of the applications was against an unnamed defendant mooring at Chertsey Bridge who moved on just before the hearing date. The Council were granted an Order for Possession in December 2018 against the other over stayer at Chertsey Meads; however the boat remains on site due to enforcement issues. This demonstrates the difficulties in moving overstaying boats along using current legal tools. The Council are now considering private tow companies to move the over stayer or possibly an application for an injunction against the trespasser or issuing a CPN.
24. Complaints have been received from individual park users, the Chertsey Meads Management Liaison Group and from local businesses regarding overstaying moorers at both Chertsey sites. The complaints have been general in nature and relate mainly to the loss of amenity in denying other legitimate moorers space and a loss of visual amenity, particularly at Chertsey Meads which is a natural countryside site.
25. Spelthorne
26. Spelthorne has noted an increase in boats overstaying at moorings provided at its parks and open spaces, in particular those at Lady Lynsey's Lawn, Kings Lawn and at Shepperton Lock. They have also noticed an increase in boats mooring in non-designated sites particularly along Thameside, Laleham and Flowerpot Green both sites owned and managed by Spelthorne Borough Council.
27. In 2018 Spelthorne completed 58 periods of mooring enforcement and issued a total of 54 overstaying warning letters. In addition they dealt with two boats at Staines Bridge by way of a Community Protection Warning (CPW) and Community Protection Notice (CPN) due to Anti-Social Behaviour comprising of fly-tipping, littering, using a chemical toilet in full view of any passing public. One of the boats moved after the warning the second upon the issue of the CPN. Spelthorne has also issued notices to six boats under the Refuse Amenity Act 1978 to abandoned or suspected abandoned vessels on Council run sites and this culminated in one vessel being removed and disposed of at great expense to the Council.
28. Other than moorings Spelthorne Council receive weekly complaints from residents, park users and the Council Grounds Maintenance teams about the amount of rubbish being left at the mooring sites.

29. **Homelessness**

30. Boroughs and districts, as local housing authorities, have responsibilities to persons who are homeless or threatened with homelessness. The Housing Act 1996 (Part VII), as amended, provides the legal framework under which Councils operate and Section 175 of that Act, a person is homeless if they have no accommodation in the UK or elsewhere which is available for their occupation and which that person has a legal right to occupy. A person is also homeless if they have accommodation but cannot secure entry to it, or the accommodation is a moveable structure, vehicle or vessel designed or adapted for human habitation (such as a houseboat) and there is nowhere that they are entitled or permitted to place it and reside in it.
31. As such, there appear to be two main scenarios where homelessness might arise from houseboats which are moored without consent. The first is where action to end the mooring and the owner / renter / operator of the boat is required to move and there is no available mooring for them to relocate to. The second scenario would involve homelessness arising from any “bare-licensees” (i.e. people who are staying on the boat with the consent of the owner / operator) having that consent withdrawn, possibly as a result of any enforcement action being taken.
32. The statutory guidance issued by the Home Office on anti-social behaviour powers was updated in December 2017 and makes it clear that Public Space Protection Order (PSPO), should these be considered, should not be used to target people based solely on the fact that some is homeless or rough sleeping and that councils should therefore consider carefully the nature of any PSPO that may impact on homeless people and rough sleepers. The guidance also indicates that councils should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.
33. 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). However, 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. It may be that some individuals would be able to access alternative accommodation without assistance, some boat owners may be able to secure legal moorings elsewhere and others may move to other unlawful moorings. On the other hand, some of the affected individuals may require assistance from the Council to help prevent or relief their homelessness, through the development of personal housing action plans as well as, in some cases, the Council having to arrange temporary accommodation for certain individuals who are homeless, eligible for assistance and in priority need.

34. As such, as it may be prudent for some form of assessment to be carried out to quantify the likely impact of a PSPO in terms of the housing circumstances of those occupying the boats in question, before introducing such an order. It would also be good practice to consult with local homelessness charities (Rentstart, Transform Housing and Support, Homeless Link) to solicit their views on the matter as part of the wider consultation.
35. **Environment Agency powers\ action**
36. The Environment Agency undertakes regular boat registration checks including unauthorised moored boats. All boats are required to have valid registration including boat safety certification and insurance. If boats are found not to comply, then the Environment Agency will seek to enforce and will prosecute. The EA will seek to take action against any owner of any vessel which has sunk and has failed to be removed.
37. The EA regularly undertakes joint enforcement action with Boroughs and Districts. In November 2018 the EA removed and destroyed 8 wrecks along the Thames in Molesey and will look to recover the cost of carrying out this operation from the boat owners, thereby protecting the income received from boats registration charges and government for other aspects of the navigation service we provide.
38. The EA also towed away a further 12 boats. These are being held at a secure location for collection by their owners but will not be released unless the boats are properly registered (which requires them to have passed a Boat Safety Scheme examination and be insured) and have a bona fide mooring to go to or are taken out of the river. The EA will also be invoicing the owners for the cost of the removal operation.
39. In addition, the EA checked a further 75 boats in the Molesey to Sunbury area. Of these, 16 were not registered and are now subject to enforcement action which could result in prosecution; 16 more were issued with 'Directions to Move' notices as they are moored to EA land without consent. This makes it a legal requirement for them to remove their boat or face further enforcement action.
40. The EA also served 'wreck' notices on 2 more sunken boats, giving the owners notice that if they do not remove them within a reasonable period of time, the EA will do so and recover costs from the owners.
41. The 75 boat registration checks were carried bringing the total carried out across the river since the start of October to 1088, of which 111 have resulted in enforcement notices being served. This is in addition to the checks carried out as part of routine patrols and specific operations since the early part of the year and equates to a further £55,000 of boat registration income which will now be collected and reinvested in the river.

42. The EA will also seek to take action against any incidents of pollution in the river that are reported to them. If you witness any dumping of waste into the river you can report to the EA on their hotline 0800 807060 and the EA will investigate.

43. **Current legal powers**

44. The River has a complex range of land owners, and the law only allows the owners of the land that the boats are moored on to take action against an unauthorised mooring. Land owners could include the Environment Agency, Network Rail or local Councils. At this point the landowner could consider applying to the Courts for a possession order, or other powers under their jurisdiction, to compel the boat owners to move their vessels. The sanctions for repeated trespass offences are increasingly stringent, so this is the most effective method for dealing with this issue and is the Environment Agency's recommended approach.

45. Councils currently have no powers to move on boats which are not moored on Council owned land. Therefore local authorities need to work with other agencies to try and resolve this issue. Elmbridge, Runnymede and Spelthorne Councils are all working closely with the Environment Agency (EA) who are taking action against a number of unauthorised moored boats on their land and some high profile repeat offenders.

46. The main powers used to date have been civil powers - possession of property (trespassers) claim. Councils have also considered application for injunctions and have had some success in certain scenarios for Community Protection Warning Notices where thresholds can be evidenced.

47. These existing powers can often be time consuming and usually only moves the boat in question on to an adjacent piece of land, and the process starts over again causing frustration for residents and increased costs and time for councils or other landowners.

48. **Planning**

49. The Local Plan evidence (in particular the Gypsy and Traveller Accommodation and Assessment) has not identified a need for houseboat dwellers. The need for other affordable housing is contained within the North East Surrey Strategic Housing Market Assessment. This need is being met through the existing local policies, new Local Plan and wider corporate commitments. As part of the review of Development Management policies Officers will review PolicDM13 Riverside development and uses and consider introducing specific criteria on mooring and floating structures similar to Richmond's Policy LP-19. However, this review and adoption will not be completed until late 2020/early 2021.

50. If those mooring boats have erected structures along the river bank that require planning permission such as fences or small structures, it will be possible to take enforcement action to remove these structures. However, it

will not cover the removal of the boats themselves, just the structures on the river bank.

51. On 17 April Elmbridge Borough Council served Planning Contravention Notices on boats moored in the Cherry Orchard Gardens area, as well as persons with an interest in this land. These notices seek to gather further information regarding the use of the land in question. Following a response EBC will be in a position to fully consider formal enforcement action. This is an untested area and as such it is not yet clear if this will be an effective course of action.
52. **Displacement**
53. As has been witnessed from the enforcement activity in Kingston and Richmond displacing boats further along the river, the same is likely to happen should one of Elmbridge, Runnymede or Spelthorne seek additional powers to enforce unauthorised moorings such as a Public Spaces Protection Order.
54. While Runnymede clearly has less instances of unauthorised moorings at present, it is highly likely that the problems current faced on other stretches of the Thames will be displaced into neighbouring Boroughs. For this reason it is proposed that all 3 Boroughs work in partnership to bring about new powers at the same time and in a coordinated fashion.

At the present time none of the above measures have proven effective in managing the issues of mooring without consent, and so it is proposed to commence an early stage of public consultation with key agencies who have a stake in the use and enjoyment of the River Thames, namely:

- Local Councillors
- Environment Agency
- Local Friends Groups
- River User Groups
- River Thames Alliance
- Surrey County Council
- Surrey Police
- National Trust,
- RPG Trust,
- Chertsey Meads Management Group
- National Bargee and Traveller Association
- Canal and River Trust
- Network Rail
- Thames Landscape Strategy
- Elmbridge Rentstart
- Transform Housing & Support
- Homeless Link
- Community Safety Partnerships

55. It is proposed that a simple engagement will take place between June and July with the above stakeholders and seek a view, given the background issues highlighted above, which of the below solutions they believe would be proportionate and appropriate to manage this issue. A further report will be brought back to members with the outcomes of this consultation later in the municipal year.

56. **Possible solutions:**

57. **Public Space Protection Order**

58. Evidence collated so far by all Boroughs suggests that a PSPO could be considered as a suitable response to the detrimental activities (as listed above) and meets the test criteria set out in the Anti-Social Behaviour, Crime and Policing Act 2014.

59. In assessing whether a PSPO can be considered the behaviour being restricted has to:

- Be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;
- Be persistent or continuing in nature; and
- Be unreasonable

60. The purpose of a PSPO is to stop individuals or groups committing anti-social behaviour in a public place by restricting certain types of behaviour. PSPOs are used in dealing with low level anti-social behaviour. The Chief Executive's principal delegation is to exercise "all functions of the Council under the Anti-Social Behaviour Crime and Policing Act 2014 including, but not limited to, the exercise of all strategic, operational and management powers and duties under the Act". It follows that the Chief Executive could approve the making of a PSPO under section 59 of the Act, provided the conditions set out in that section were satisfied.

61. The Home Office guidance is not specific on what can be included in PSPOs as they have been designed to be flexible to the needs of local areas problems. A single PSPO can cover multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities; for instance, people walking their dogs must keep them on a lead.

62. Councils are the Responsible Authority for implementing PSPOs which must be reviewed at least every three years. The maximum length of a PSPO is three years.

63. The test criteria is designed to be broad and focus on the impact of anti-social behaviour is having on victims and communities. A PSPO can be made by the Council if they are satisfied on reasonable grounds that the activities carried out meet the above tests and evidence.

64. Encouraging open discussion as part of the PSPO consultation process can help to identify how best to balance the interests of different groups – both those affected by anti-social behaviour and those who will be restricted by the terms of the Order – and a chance to explore whether there may be unintended consequences from the proposals; in particular any adverse impacts on vulnerable people.
65. In ensuring that the requirements under s.59 of the 2014 Act have been satisfied, councillors will have a significant role to play in considering what might be regarded as unreasonable and detrimental behaviour in the locality and what would constitute reasonable restrictions or requirements. Other legal remedies have been considered, including Community Protection Notices, trespass action, statutory nuisance provisions within the Environmental Protection Act 1990 and licensing regimes.
66. These remedies can be used at the same time as PSPO powers but are more suited to responding to individual cases, as opposed to preventing behaviours before they arise. They also tend to have higher sanctions such as seizure and remedial order provisions and are more suited to persistent or very serious cases. It may be useful when considering a PSPO to make a comparison with byelaws that set clear standards of behaviour for people who use an area; PSPOs replace any existing byelaw provisions.

67. **Byelaws**

68. Following a period of consultation, the London Borough of Richmond introduced byelaws in 2015 meaning that a criminal offence will be committed if any vessel is moored to council land for longer than permitted without the written consent of the Council. The details of the restrictions are detailed on the Councils website.

The offences associated with this byelaw are criminal offences which are punishable upon summary conviction with a maximum fine of £500 per contravention. Both the owner and the master of a vessel may be prosecuted.

69. Byelaws have been used successfully to manage mooring consent in some London boroughs (i.e. Richmond); however, this relies on the land being local authority controlled. The waterside land ownership through the 3 boroughs is complex with many riparian owners, making a byelaw unworkable.
70. Spelthorne Borough Council last updated their byelaws in 2009 meaning that a criminal offence will be committed if any vessel is moored for longer than permitted without the written consent of the Council. Restrictions currently allow 24 hours in any 48 hour period, with the details of the restrictions published on the Councils website and on signage at each location.

71. The offences associated with this byelaw are criminal offences which are punishable upon summary conviction with a maximum fine of £500 per contravention. Both the owner and the master of a vessel may be prosecuted. In the past three years Spelthorne Council have prosecuted masters and owners of vessels a total of 5 times, many for multiple breaches of the bye-laws and the maximum fine has been issued by the Magistrates Court on a number of occasions.
72. **Managed moorings**
73. Kingston Council currently provides free moorings available for up to 24 hours at Townend Wharf and Horsefair Quay, and fee paying moorings are available at the privately owned Charter Quay.
74. Proactive enforcement action is taken, using legislation unique to Kingston against any person permitting a boat to overstay on a 24 hour mooring or that moors unlawfully. Section 23-28 of the Greater London Council General Powers Act 1972 applies only to Kingston and they rely upon the provisions of the Act to manage the riverside in the Borough. The Act provided powers to serve notices on unlawfully moored boats, remove them if they fail to comply and recover their costs. No mooring is permitted at the rest of the riverside in its ownership or management.
75. It would be possible to consider widening each Boroughs approach to managed moorings, and allowing fee paying moorings for a fixed period. If this was the preferred approach, further work would be needed to identify the areas that would be permitted for moorings. In addition, it is likely that contracts would need to be established for the collection of mooring fees. Members may equally decide that there are areas that moorings should not be tolerated, and a similar approach can be taken with mooring fees set at £100-£200 a day to dissuade moorings at these locations.
76. It is worth noting that again, this relies on the land being local authority controlled. The waterside land ownership through the 3 boroughs is complex with many riparian owners and as such this could only be managed on Council owned land, which is likely to displace and concentrate local issues on other owned land.
77. Currently Spelthorne Council have two sites that are managed by District Enforcement on their behalf. The two areas have signage and in effect if you moor at the location then you agree to pay a daily charge of £100. During 2018 District Enforcement issued 3 penalty charge tickets none of which have currently been paid and are being pursued through the County Court.
78. At the same time as the stakeholder consultation is being carried out, it is proposed to implement a 1 year pilot for managed moorings on Elmbridge owned land from Hampton Court Bridge to the Borough boundary with Kingston. This would include Cigarette Island Albany Reach and Ditton Reach.

A full equalities impact assessment will be carried out as part of the next stages of consultation once a preferred option is known. This will include the impact of any mooring restriction in addition to those already in place may impact on Bargee travelling community.

Risk Implications:

As contained within the report.

Community Safety Implications:

The options considered in this report are in response to a joint approach to the problems associated with unauthorised moorings in each of the 3 Boroughs.

Principal Consultees:

Surrey Police
Environment Agency
Spelthorne Borough Council
Runnymede Borough Council
Environment Agency
Head of Planning Services
Head of Organisational Development
Head of Legal Services
Group Accountant (Leisure)
Head of Housing Services

Background papers:

None

Enclosures/Appendices:

None

Contact details:

Ian Burrows
Head of Leisure and Cultural Services
01372 474572
iburrows@elmbridge.gov.uk