

Committee: Cabinet

Date of meeting: 18 September 2019

Subject:	Unauthorised moorings: Stakeholder feedback
Lead Officer:	Head of Leisure and Cultural Services
Portfolio Holder:	Portfolio Holder for Leisure and Culture, 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:	No

Executive Summary:

This report summarises the feedback from the stakeholder consultation on 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 similarly 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 note the results of the stakeholder consultation; and**
- (b) Members note that officers will be working with the Member Task Group and neighbouring Boroughs, Surrey County Council, Surrey Police and the Environment Agency to consider a consistent way forward, with a report back to Cabinet with any recommendations in due course.**

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. **Latest position**
6. Since the meeting of the Cabinet in June, Officers have continued to work with partners to find solutions to the immediate problems caused by mooring without consent.
7. Spelthorne's Cabinet has similarly considered the issues and is currently consulting on new powers, focusing mainly on PSPOs, to prevent unauthorised Mooring until the end of September. Runnymede has yet to report to members on this issue.
8. **Managed moorings**
9. Members have previously agreed to progress with a 1 year pilot working with District Enforcement at Cigarette Island, Ditton Reach and Albany Reach to enforce no mooring at these locations. Signage has been erected at these 3 locations during August with enforcement to commence from 7 September 2019.
10. **Planning enforcement**
11. On the 8 August the Planning Compliance Team issued 9 Enforcement Notices for a number of moorings located north west of Cherry Orchard Gardens and adjacent to the tow path. The notices come into effect on the 9th September and require the cessation of the use of the land for the permanent mooring of boat/s and the removal of any structures, fencing or enclosures, which have been erected in association with the use of the land for the permanent mooring of boat/s, within one month from the date of which the notice takes effect. The recipients do have a right to submit an appeal, prior to the date the notice takes effect, which would place on hold any of the requirements of the notice until the appeal/s are decided
12. **Community Protection Warnings\ Notices**
13. Enforcement Officers have served persons in the vicinity of Cherry Orchard Gardens with a Community Protection Notice (Warning Letter) to cease any further removal of vegetation and trees and also not to add any further fences or buildings to the riverbank. If persons fail to comply with the above requirements within the timescales given, then Elmbridge Borough Council will consider serving a Community Protection Notice (CPN) which could lead to a fixed penalty notice or risk prosecution.

Further to complaints received regarding the impact of mooring at Miskins Wharf on the Walton Rowing Club site, Elmbridge Borough Council served the vessel moored at the said site with a Community Protection Notice (Warning Letter) on 8 August 2019. The CPN instructed the boat to leave

the site with immediate effect, and if they fail to comply, the Council may take further enforcement action or a fixed penalty notice. This is ongoing.

14. **EA action**

15. Where the Environment Agency is landowner, the EA are generally happy to allow boats to moor (or anchor) for 24 hours as part of the public right of navigation, provided mooring is safe and does not cause a hazard or obstruction to navigation. The EA provide mooring facilities at a number of lock sites, and at a small number of locations in between some of the locksites and promote the availability of these. Boats using these facilities and mooring at other locations where the EA are landowner, are managed by their staff, with overstayers subject to escalating enforcement action, including legal action if necessary, subject to the availability of resources and other priorities.

Enforcement is not always a straightforward process and can be subject to lengthy timescales. The EA are currently progressing a number of cases within Elmbridge Borough Council's boundaries to deal with c.50 overstaying boats having already removed or destroyed another 30 overstaying vessels. This is in addition to overstaying boats which have complied with enforcement action.

16. **Stakeholder Consultation**

17. Following the meeting in June, officers have carried out stakeholder consultation during June and July with the stakeholders below, to seek a view, given the background issues highlighted in the June cabinet report, which of the below solutions they believe would be proportionate and appropriate to manage this issue

- Public Space Protection Order
- Byelaw
- Managed mooring
- Do nothing

18. The consultation was sent to the following stakeholders:

- *Residential Boat Owners' Association (RBOA)
- Association of Thames Yacht Clubs
- River Thames Society
- *River User Groups
- Thames Motor Boats Association
- *British Marine London & Thames Valley
- Dutch Barge Association
- EBC Councillors
- *SCC Councillors
- *Environment Agency
- *Local Friends Groups

- *River Thames Alliance
- *Surrey County Council
- *Surrey Police
- National Trust,
- River Trust
- *National Bargee and Traveller Association
- Canal and River Trust
- Network Rail
- Thames Landscape Strategy
- Elmbridge Rentstart
- Transform Housing & Support
- Homeless Link
- Shelter
- Crisis
- Elmbridge Community Safety Partnerships
- *Reclaim our riverbank
- *Angling trust

*formal response received

19. In addition to the formal list of stakeholders above, several individual local residents, and resident group also responded to the consultation and these have also been included in this report. A number of boat clubs expressed an interested in responding and they too have been included.
20. There were a wide range of opinions on the consultation from boat owners\ representative bodies and other stakeholders\ residents. These have been discussed with the Gypsy Roma and Traveller Member Task and Finish Group at their meeting on 3 September 2019, as moorings have been included in their Terms of Reference.

Amongst those who wished to see greater enforcement there was no clear preferred solution, other than 'do nothing' not being an option. There was slightly more support for either a managed mooring or PSPO solution. Equally there was strong representation among the boating community not to be seen to unfairly target boat owners and legitimate use of the river.

21. A summary of the feedback received is included at appendix A, and the full responses have been made available in the members room and have been discussed with the Gypsy, Roma and traveller Member Task and Finish Group at its meeting on 3 September 2019.
22. Issues raised:

General

Any enforcement could have implications on making a liveaboard boater homeless.

- Local housing authorities, such as the Council, have responsibilities to persons who are homeless or threatened with homelessness, as set out by the Housing Act 1996 (Part VII), as amended. It is recognised that enforcement action could impact on the housing circumstances of those residing in any boats which are displaced by any future enforcement action or change in management adopted. At this point it is not possible to quantify what those impacts might be. It may be that some individuals may be able to access alternative accommodation without assistance, others may secure legal moorings elsewhere and others may require assistance from a local authority, such as Elmbridge BC to help prevent or relieve any homelessness which might result. It would be prudent to consider the potential housing impacts of any proposed course of action and that any plans to introduce significant change in the management of the river incorporate plans to ensure that affected individuals / households are encouraged to consider their options and seek any assistance around their future housing situation as early as possible.

The Councils have failed to carry out an assessment of boat dwellers needs as required under Housing and Planning Act 2016 s124. Such an assessment should now be carried out before any further action is taken.

- Currently, the Local Plan evidence base (in particular the Gypsy and Traveller Accommodation and Assessment and North East Surrey Strategic Housing Market Assessment (SHMA)) has not identified a local need for houseboat dwellers. The need for other affordable housing is contained within the SHMA. This need is being responded to through the existing local policies, the preparation of the new Local Plan and wider corporate commitments.

As part of the preparation of the new Local Plan, the Council will be revisiting its assessments of local housing need, this will include the consideration of the local need for houseboat dwellers. This work is expected to commence this year and conclude in early 2020. The findings of this work will inform the approach taken in the new Local Plan in responding to any identified local need for houseboat dwellers.

In addition, part of the review of Development Management Plan policies, Officers will review Policy DM13 Riverside development and uses and this may include the consideration of 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 as part of the new Local Plan.

The preparation of a new Local Plan would not prejudice the Council's ability to take action.

This is a flawed consultation and should be withdrawn.

- For the avoidance of any doubt, this 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 then a further, full public stakeholder consultation will be undertaken setting out exactly what the PSPO proposes and in what geographical areas.

23. PSPO

SCC\ other agencies do not have the legal power to enforce a PSPO.

- s.59 Anti Social Behaviour Crime and Policing Act 2014 (ASBCPA) gives local authorities the power to make PSPOs if satisfied on reasonable grounds that two conditions are met. (a) activities carried out in a public place within the authority's area have has a detrimental effect on the quality of life of this in the locality; or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- Once a valid PSPO has been created by the Council, the Council has the power to legally enforce it. S.67 of the ASBCPA provides that a person is guilty of an offence if without reasonable excuse, breaches the PSPO.
- The Chief Executive is empowered to delegate authority to other appropriately trained bodies to enforce PSPOs within Elmbridge.
- S.67(2) ASBCPA provides that a person guilty of an offence under the section, is liable on summary conviction to a fine not exceeding level 3 on the standard scale (ie. £1,000) Do Elmbridge\ other agencies have the powers to enforce a PSPO on SCC\ other land.
- The Order is made by an LA within the authority's area and the effect of the asb/crime is having or will have on the quality of life in the locality. This could be on another agencies land, for instance the Walton Town Centre PSPO covered a wide range of landholders.

PSPO would violate the Public Right of Navigation (PRN) on the River Thames

- The public right of navigation (as described in the Thames Conservancy Act 1932), is a right to anchor or remain stationary for a reasonable time in the ordinary course of pleasure navigation subject to such restrictions as the Conservators may from time to time determine. The Conservators shall make special regulations for the prevention of annoyance to any occupier of a riparian residence by reason of loitering or delay of any house-boat or launch and for the prevention of the pollution of the Thames by the sewage of any house-boat or launch'. This carries with it a right to moor temporarily, to wait. A PSPO will therefore not be in breach of a PRN. If anything, it seeks to protect the users peaceful and quiet enjoyment of the river.

The PSPO would 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.

- See above.

The PSPO would breach Section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014.

- S66 relates to 'Challenging the validity of orders' and as such does not appear relevant here.

The PSPO would violate the rights of boat dwellers to respect for their homes under article 8 of the European Convention on Human Rights (ECHR).

- Article 8 ECHR is a qualified right which provides a right to respect in 4 protected areas: Private life, Family life, Home and Correspondence.
- An interference in the Article 8 right is when it is (a) in accordance with the law (b) in pursuit of one of the legitimate aims eg. National security, public safety, economic well-being, the prevention of disorder or crime, the protection of health of moral or the protection of the rights and freedoms of others;(c) necessary in a democratic society.
- Unless individuals are able to prove how their Article 8 HR has been interfered with by the PSPO, it cannot be relied upon.

24. **Byelaws**

Can new Byelaws be used on land not owned by EBC?

- Control of land goes to practical enforcement and a local authority must rely on statutory powers and address matters within its competence. However, ownership of land is not a strict prerequisite and local authorities have powers to designate others to enforce on their behalf. A byelaw can be made by a local authority under an enabling power for the regulation of its affairs or management of the area it governs. s.235(1) Local Government Act 1972.

Byelaws prohibiting mooring would subvert the right to moor pursuant to the PRN on the River Thames and would thus be repugnant to the general law

- At this stage, proposed byelaws have not been drafted but any proposed byelaw will not prohibit but limit the period over which a boat can be moored.
- We should note here that s.79(2) Thames Conservancy Act 1932 does not provide an unrestricted right but only a right to anchor, moor or remain stationary for "a reasonable time in the ordinary course of pleasure navigation".

Byelaws with strict mooring time limits would compromise navigational safety by forcing boaters to navigate in unsafe river conditions.

- At this stage, proposed byelaws have not been drafted but would ensure that there was no obligation to move when river conditions (according to EA flags) were not safe to do so.

25. **Managed mooring**

Managed moorings requiring moored boats to move on when river or weather conditions are unsafe

- There would be no obligation to move when river conditions (according to EA flags) were not safe to do so.

The imposition of high daily charges violates of the right to moor for a "reasonable time" within the PRN, which is codified in Section 79 of the Thames Conservancy Act 1932.

- It is not considered that a proportionate and managed approach to moorings would contravene this statutory right which is itself subject to the imposition of reasonable regulations in practice.

The only way that a fine can be imposed is by statute and as car park enforcement companies have no statutes, the mooring charge claimed is unlawful.

- s.93 Local Government Act 2003 gives LA's the power to charge for discretionary services if the recipient of the service has agreed to pay for a service to be provided.

26. **Alternative proposals**

Following the success of the injunction for unauthorised encampments Elmbridge and other partners should consider joint application for an injunction.

- The other Authorities will have to agree to this. It may be that one agency will be appointed / instructed to act on behalf of the 'partners'. EBC or one single entity should seek to acquire ownership and subsequent management of all public riverside land
- Whilst on the face of it this may seem a simple and effective solution this has a number of challenges. Each landowner would be required to negotiate the means by which this was transferred (lease, license, donation) and what terms and conditions were attached to this. This could potentially be very costly and complex in terms of liability, maintenance, insurance as is something that the Council could not support. In addition to this there would need to be expertise resource allocated to managing of the public riverside land and the council do not have the knowledge or expertise to support this route.

Local planning and housing authorities should be encouraging the development of approved and managed residential mooring sites, with appropriate facilities which should be offered, in the first instance, to existing local boaters with an affordable annual mooring fee.

- In a similar manner to temporary transit sites this is a very complex undertaking and in order to accommodate 50-80 boats would need multiple sites. Notwithstanding the identification of sites that would be supported, this provides challenges of initial capital cost to construct (including ancillary facilities, showers, waste, water), planning permission, ongoing revenue costs to manage and run including cleaning costs, ongoing maintenance, health and safety issues and means to collect mooring fees. To even consider this route the council would have to employ expertise resource which we do not have in-house

27. **Way forward**

As highlighted above, currently, the Local Plan evidence base (in particular the Gypsy and Traveller Accommodation and Assessment and North East Surrey Strategic Housing Market Assessment (SHMA)) has not identified a local need for houseboat dwellers.

As part of the preparation of the new Local Plan, the Council will be revisiting its assessments of local housing need, this will include the consideration of the local need for houseboat dwellers. This work is expected to commence this year and conclude in early 2020. The findings of this work will inform the approach taken in the New Local Plan in responding to any identified local need for houseboat dwellers.

28. As is clear from the feedback there are strong views both for and against further enforcement on the River Thames. What is clear from our residents is that 'do nothing' is not an option.
29. What is clear is that a coordinated approach to managing mooring is required between neighbouring councils, Surrey County Council, the Environment Agency and Surrey Police to ensure that one problem is not displaced into an adjoining area. Spelthorne Borough Council are carrying out their own consultation at the moment and this closes in September.
30. It is proposed that Officers work with the Member Task and Finish Group and neighbouring authorities to consider a consistent way forward, with a report back to Cabinet with any recommendations in due course.

Financial implications:

Depending on the final decision, there are possible enforcement costs which would need to be looked into further as it could require changes in working hours and structure of the enforcement team or appointment of an external contractor.

Environmental/Sustainability Implications:

The controls for unauthorised moorings will assist police and council colleagues in maintaining good public order and thereby supporting the economic sustainability of Elmbridge, Runnymede and Spelthorne, the quality of life for the users and residents.

Legal implications:

As contained within the report

Equality Implications:

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 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 or homelessness .

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:

Spelthorne Borough Council
Runnymede Borough Council
Environment Agency
Head of Planning Services
Community Safety
Legal
Group Accountant (Leisure)
Head of Housing Services
Stakeholders as listed in the report
Head of Asset Management and Property Services.

Background papers:

None

Enclosures/Appendices:

Appendix A- summary of feedback.

Contact details:

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