

# **Agenda and Minutes Supplement**

**Scrutiny Committee  
Monday 7 March 2016**

**Written submissions  
from the public on  
Waterways PSPO consultation**

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## Written submissions received by the Scrutiny Committee on item 5: Oxford Waterways Public Spaces Protection Order consultation

### Submission 1: Lynn Shepherd

I live on the canal, opposite the playground on the Aristotle Lane recreation ground. As my neighbours will attest, this whole area faces a persistent and serious air quality problem caused by toxic diesel fumes and smoke from burners, emitted by boats moored on this stretch. I've been in contact with Richard Adams and James Fry on this issue for some time, and as James can't be at the meeting on the 7th, he's asked me to contact you, to ensure residents' concerns are taken into account, and that you are all aware of the extent of this threat to public health, which the Canal & River Trust are totally unable to control.

As the news told us only this week, diesel pollution is contributing to up to 40,000 premature deaths every year, and yet the Canal & River Trust regime allows stationary boats to sit there pumping out fumes right by the playground for TWELVE HOURS A DAY. it's like having a 1970s lorry park there and do the same - which would (rightly) cause outrage.

The key points here are:

- Canal boats benefit from none of the technology now mandatory for vehicles, and many are old rust buckets spewing out visible and foul-smelling fumes.
- There is NO emissions testing for boats, so no-one, least of all the Canal & River Trust, knows just how toxic these emissions are
- The canals are exempt from the Clean Air Act (as the Trust never cease to remind me) - a historical anomaly that only a PSPO can correct
- The Canal & River Trust are taking no action on this issue, indeed they are robustly defending the status quo. The long and painful experience my neighbours and I have had of them proves that they are only interested in boaters, and in avoiding even the slightest inconvenience to that group - even to the point of refusing to insist on smokeless rather than polluting fuel (and the former is readily available, and already used by the boats at Hythe Bridge).
- Boats who want to charge their laptops and TVs can easily do so before they arrive at these moorings, or they can come off temporarily and go up and down to do this instead.

Minor inconvenience to boaters cannot be allowed to take precedence over the health of children and residents, who have a human right to clean air.

I attach a selection of photos showing just how bad this gets. As for the frequency of the problem - I had to contact the Trust more than 60 times last summer alone. My neighbours have been facing this problem for years and years.

This cannot go on - the PSPO is our one chance to deal with it once and for all.

[UK air pollution 'linked to 40,000 early deaths a year' - BBC News](#)



Stationary boat emitting both diesel fumes and



On the left is the pollution it produces as a result – the playground is immediately behind the trees, and adjacent is the walking route to Phil & Jim's. The towpath is a busy walking/cycling route to the station at that time of the morning

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Permanently moored and the resultant playing fields (below)

Diesel fumes



smoke at the same time (above)

boat emitting smoke (left), pollution on St Edward's school

polluting the tow path (right)

Further diesel pollution (below). This boat had been moored for nearly two weeks and running engines constantly during that time.

The fence of the playground is visible on the right of the picture, only yards from this pollution



## Submission 2: Sharyn Hyde

I am writing to express my concern on hearing the news that there is to be a meeting about a potential PSPO to prevent boaters from mooring in Oxford if they don't have permission from the landowner.

I am writing as a person who has lived on my boat and continuously cruised for the last 5 years in the Oxford area, whilst working full time for the NHS. I am one of the many liveaboard boaters who you don't normally hear from, because I am too busy working and looking after my boat and complying with the rules to move my boat to attend meetings and shout about boaters' rights. From the little that I have heard I think that those that do shout loudest are not representative of the majority of liveaboard boaters.

I do not want to live for free. I would be happy to pay for a residential mooring should there be the opportunity to buy one at a reasonable rate. I bid for the last agenda 21 mooring to become available, but I'm afraid that £6,610 per year to moor on a muddy piece of towpath with frequently broken facilities next to a trainline and with problems with people using heroin and camping in the woods nearby was a little much for me. I am concerned that the PSPO is unnecessarily draconian and discriminates against boaters like myself because of a few people who are not representative of the community. It sounds as if many of the things that are described (noise, shouting) are caused not by boaters but by people using the towpaths as thoroughfares, and I would argue that having a community of boaters with an interest in the area adds to the security of the area, not detracts from it.

Further to this, I'm not sure the proposals are verifiable or enforceable or even legal. Many areas of towpath are not clearly owned by anyone and so it would not be possible to check if it is ok to moor there. There is a longstanding right to moor on areas of towpath, and I believe on the river there are many old wharfage points where there is a right of access to moor.

I despair of the people who buy homes overlooking a working canal because it has a waterside view and then complain about it having boats on it, as happens in Summertown. I feel that the council is pandering to these people rather than considering all of the people who make up the local community. I personally struggle to moor within the city ring road because of the problem with mooring spots with a long enough time to stay. Because I work, I can often only move my boat at weekends. The canal is very poorly dredged too, resulting in not being able to moor next to the towpath but having the boat listing badly and having to use a long plank to access it. Because of these problems, you are less likely to see the boaters like myself who do move about and do not cause problems. We are part of the community. I find this proposed PSPO insulting, short sighted and discriminatory towards people like me.

I live on my boat because I love living on the waterway, having grown to love the lifestyle working on hotel boats 16 years ago. I am not choosing it because it is a cheap and easy option (it isn't) but because I love boating and the community that goes with it. I ask that you consider consulting people like myself before trying to push through ill thought PSPOs that are likely to be ineffective against the people you are targeting, difficult and costly to enforce, possibly illegal and certainly discriminatory against a sector of the population.

### **Submission 3: Elizabeth Harris**

I live on Kingston Road and my property backs on to the canal near Aristotle Bridge. I bought the house in 2002 but only lived there for a short while before moving away for financial reasons. I came back at the beginning of November to realise my dream of living in this beautiful spot.

However, since taking up residence once again I have been profoundly disappointed by the very unpleasant smells and noise from some of the boats moored at the bottom of my garden. I looked forward to having my grandchildren to stay but now am extremely worried about the quality of the air they will breathe while playing in my garden or in the excellent playground facility on the other side of the canal . We used to enjoy an evening drink at the canal side but the smell emanating from some of the boats would certainly deter us from doing so now.

I have to add that it would seem that such pollution is not a necessary element of boat owning, as some of the boats do not need to run their engines for long periods and do not exhaust black oily fumes into the air. In fact we partake in friendly banter and enjoy their company during their brief stays.

I understand that a new Public Spaces Protection Order is proposed to enforce the law regarding illegal and anti social behaviour along the canal and I am pleading with you to support the inclusion of restrictions on the running of engines and the production of filthy exhaust. This is not just to ensure my own and my neighbours enjoyment of the waterside but most importantly to protect the health of the children playing in the surrounding area.

#### Submission 4: Lynn Shepherd

These pictures were taken on the ten-minute cycle ride along the towpath to the Virgin gym this morning. On an otherwise clear day, the first shows a permanently moored boat emitting smoke over the St Edward's school sports area. The second a boat on the Waterways stretch also emitting smoke. And the third shows one on the Bainton Road stretch. The boat shown behind the latter – Midsummer – was running diesel engines for hours right by the playground on both Friday and Saturday, when there were children there, as James Fry witnessed. It has now moved on, but we will never be able to prevent this 'pollute and go' behaviour without the PSPO and strongly worded signage all along this stretch, to act as a deterrent. The air along the playground/recreation ground is currently clear, but for one reason and one reason only: there are no boats. Please remember also that we are in the low season – if it's bad today it will be ten times worse in the summer.

If I set up a diesel generator at the end of my garden and started pumping fumes over the playground the Council would come down on me like a ton of bricks – and rightly so. So why should these people be allowed to get away with it? Far from discriminating against boaters, the current regime allows them to behave in a way that would never be tolerated of anyone else. The PSPO is absolutely vital to redress this toxic imbalance (in every sense).

Clean air is in everyone's interests, including boaters. I can't see how anyone who cares about either the environment or health could possibly disagree.



## **Submission 5: Nick Brown, Secretary and Legal Officer, NBTA**

Ladies and Gentlemen

This is an open letter.

I am writing to you in your capacity as members of the Scrutiny Committee.

The NBTA understands that the Scrutiny Committee is meeting on 7th March 2016 18:15 in St Aldate's Room, Town Hall. I understand that Item 5 on the agenda of the meeting is entitled "Waterways Public Space Protection Order: pre-consultation" (the "PSPO Draft")

I understand that my colleague Pamela Smith served a Fol requisition on the Authority on 25th November 2015 here:

[https://www.whatdotheyknow.com/request/public\\_space\\_protection\\_orders#outgoing-520062](https://www.whatdotheyknow.com/request/public_space_protection_orders#outgoing-520062)

The response from the Council does not identify the PSPO Draft.

The NBTA knows that the PSPO Draft existed on 25th November 2015.

A review of this requisition has now been also requisitioned.

What is relevant is the covert nature by which the PSPO Draft has been developed. What is also relevant is the way that this has been done in opposition to the boaters in Oxford as opposed to engagement with this community.

I have reviewed the support documents contained in the information pack made available to the Committee.

I observe as follows:

### **A RESPECT FOR HOME**

The PSPO Draft in no way embraces the implications of Art 8 ECHR.

There is no evidence of a compliance review. The NBTA has considerable experience of the impact that draconian policy has on the Convention rights under Art 8 ECHR of itinerant live aboard boaters. In the defence of certain matters, full-scope proportionality assessments have demonstrated that the policy from which each action was bought has been violating of Art 8 ECHR.

### **B EQUALITY**

The Equality Impact Assessment considers that the PSPO Draft will not have a differential impact on race, age or pregnancy. The case work that the NBTA has completed demonstrates that Irish Travellers are not infrequently boaters; boaters are regularly elder people with significant health-related difficulties;

younger female boaters are frequently pregnant or are caring for infants under 6 months of age. These are all protected characteristics for which we have secured Reasonable Adjustments. It is untrue to say, therefore, that these designations are not impacted. In turn this suggests that the Officer responsible for this draft policy has not sought sufficient advice on the conducting of an EIA. It is also important to note that in the case of CRT the Equality and Human Rights Commission has intervened because of the non-compliance of CRT in this respect.



## C EVIDENCE

Upon review of the evidence made available I see no clear connection between mooring by itinerant live-aboards and the antisocial behaviour complained of. I do however see echoes of anti-live-aboard prejudice.

What I am aware of from NBTA casework is that some of the behaviour alleged is actually mitigated by the presence of live-aboard boaters. I will expand on this in the consultation submission that the NBTA will prepare when the consultation is under way.

I also see, in the evidence, reference to anti-social behaviour that obviously comes from a demographic that is plainly not that of live-aboard.

I also observe that some of what is described as "anti-social" behaviour is in fact nothing of the kind but is the normal and necessary activity of a boat-dweller and, significantly, protected in law. The conclusion is that the complainants are objecting to something to which they have no right of complaint. If they object clearly they can lobby their MP but in balancing the respective interests this is a matter resolved through negotiation not law.

I am also acutely aware that UMBEG, which has no legal standing, was the brainchild of a small number of highly opinionated (and acutely anti-live-aboard) counsellors and British Waterways (specifically Sally Ash who subsequently left BW and has since been discredited). We note that the apparent policy of CRT is to cleanse the jurisdiction of itinerant live-aboards. Therefore the underpinning political objective of UMBEG can be considered to be none other than draconian and lacking in balance. I therefore regard the "evidence" as highly subjective and thus undermined.

## D JURISDICTION OF THE CANAL & RIVER TRUST

I note that the PSPO Draft will seek to circumvent primary legislation (s.17(3)(c)(ii) British Waterways Act 1995). The Council has no authority to do this and would thus be acting ultra vires in seeking to do so.

## E JURISDICTION OF THE EA.

I note that the PSPO Draft will seek to circumvent primary legislation (s.79 Thames Conservancy Act 1932). The Council has no authority to do this and would thus be acting ultra vires in seeking to do so.

## F RIPARIAN OWNERSHIP

In relation to land owned by a riparian, notwithstanding s.79 TCA 32 a navigator is entitled by virtue of the Public Right of Navigation to moor ancillary to navigation (there is copious case law surrounding this principle). The PSPO Draft seeks to circumvent these authorities and could thus be successfully challenged. Knowing this, the Council would be acting ultra vires in seeking so to promulgate the PSPO Draft.

## G CONSULTATION

I note that the Council has scheduled a consultation phase between

21st March 2016 and 6th May 2016. I note that itinerant boaters who would be affected by PSPO Draft will be specifically and individually consulted as is the obligation on the Council so to do within the . Scope of the Guidance on Consultations from the Cabinet Office.

What is noticeable however is an absence on the part of the Council of seeking to engage with the boaters before this time to assess their needs, embrace the boaters as part of the community and as a general principle seek to be inclusive. No attempt has been made to devise a plan to regularise moorings suitable for itinerant boaters within the jurisdiction. I note that s.225 HA 2004 is binding on the Authority in this regard

I am aware from the work of UMBEG and the attempts of boaters to attend UMBEG meetings that the exact opposite has been taking place. I have first hand experience from the actions of Oxford City towards me personally when I was moored in Oxford in 2010. I also have extensive reports through NBTA casework involving boaters living in Oxford of this behaviour being persistent.

There is no evaluation of how to work with boaters in addressing anti-social behaviour either perpetrated by boaters or other demographics.

The role of consultation is to inform the policy developer of the public and legal acceptability of such a policy, specifically as to whether it meets but does not exceed the essential objective it sets out to address. I note that the closing date of the consultation is 6th May 2016. I note that the Executive Board will meet to promulgate the PSPO Draft on 16th June 2016, the PSPO Draft having been previously reviewed by the Scrutiny Committee on 7th June 2016. I do not consider it feasible to digest the feedback from the consultation and then incorporate the feedback into the PSPO Draft in this time unless this step is not undertaken on a bona fide basis. I consider it reasonable to assume that the PSPO Draft could thus be reviewable judicially which would be our recommendation to someone who was enforced against unlawfully as a consequence of the action of the promulgated PSPO Draft.

In advance of the consultation I hope that these comments are useful to the Scrutiny Committee.

#### *About the NBTA:*

The National Bargee Travellers Association is a voluntary organisation formed in 2009 that supports itinerant boat dwellers ("Bargee Travellers"). I am one of the founders and I am the Secretary and Legal Officer. The NBTA has just over 500 members spread across a number of regional groups. One of the primary activities of the NBTA involves casework supporting boaters engaged in enforcement action. Where it is clear that a navigation authority or public sector riparian is engaged in draconian action against an itinerant boat-dweller the NBTA steps in to support the boater, through onward referral to one of a panel of law firms experience in this field or through attempts to mediate amicable settlements.

## **J Franklin, OCC Lawyer Team Leader response to submission 5**

I refer to your email dated 2 March 2016 addressed to members of the Council's Scrutiny Committee.

You will be aware that the Scrutiny Committee is receiving a report about the proposed consultation process supporting the imposition of a Public Space Protection Order (PSPO) covering Oxford's waterways. The report will also be considered by the Council's City Executive Board on 17 March 2016. The context of this report is the proposed consultation process and not the making of the order itself.

You have raised a number of interesting points which, my colleagues will accept as your organisation's contribution to the consultation.

At this stage I thought it would help if I set out the behaviours the proposed PSPO seek to control:

- a. No person shall moor any boat or amphibious craft to any land without the consent of the land owner, or managing authority, or breach any conditions imposed by the land owner or managing authority;
- b. No person shall obstruct a footpath, river bank, canal bank or waterway;
- c. No person shall store items or erect structures without the consent of the landowner on land adjoining the river bank or canal bank;
- d. No person shall create smoke or noise pollution causing annoyance to others;
- e. No person shall tamper with waterways habitats, signage, lifebelts, fencing or other waterways infrastructure;
- f. No person shall refuse to stop drinking alcohol, or to hand over containers (sealed or unsealed) which are believed to contain alcohol, when required to do so by an authorised officer in order to prevent a public nuisance or disorder;
- g. Any person in charge of a dog within the restricted area shall be in breach of this Order if he/she:
  - Fails to put the dog on a lead and keep it under control when requested to do so by an authorised officer.
  - is found to be in charge of more than four dogs at the same time whilst in a public place.
  - Allows the dog to foul in a public place and then fails to remove the waste and dispose of it in an appropriate receptacle.

Bearing in mind what the draft order seeks to achieve I'd like to offer the following observations on your submissions:

1. The draft order seeks to introduce 7 measures in a bid to reduce anti-social behaviour and improve public safety on Oxford's waterways. At this stage it would be wrong to assume that all of these measures will survive the consultation process or that the order itself will eventually be approved.
2. Of the 7 measures I would suggest that only paragraph (a) could potentially affect your members. It can't be assumed that the remaining measures are related to mooring or living on a boat. The correct interpretation of paragraph (a) is that it relates to the mooring of craft to land and can only be applied if the mooring does not have the consent of the land owner/managing agent. It does not interfere with the right of any person to use a boat as dwelling house or their enjoyment of the same. In addition paragraph (a) (or any of the other measures for that matter) does not seek to extinguish public rights of navigation.
3. The remaining 6 measures are capable of being infringed by anyone using the waterway, towpath or river/canal bank in a manner which is contrary to the aims of the PSPO.
4. You have alerted me to various pieces of legislation, in particular section 79 of The Thames Conservancy Act 1932 (the 1932 Act) and section 17(3)(c)(ii) of The British Waterways Act 1995 (the 1995 Act). As far as I can see the 1932 Act has been amended by the Thames Conservancy Acts of 1959, 1966 and 1972. In any event my reading of section 79 of the 1932 Act is that it provides for the passing and re-passing of vessels over and upon every part of the Thames including backwaters, creeks and side-channels. It also provides for the imposition of restrictions by the Thames Conservators. Even if it accepted that section 79 remains in force there is nothing within the Council's draft PSPO which impinges on these powers.
5. Section 17 of the 1995 Act provides for conditions as to certificates and licences. I assume that these are issued by the Environment Agency? Section 17(3)(c)(ii) so far as I can see relates to the availability of a mooring space as which a vessel can be left lawfully. It seems to me that only paragraph (a) of the draft PSPO has any relevance to the 1995 Act? That said, if the owner of the vessel has mooring consent from a land owner then the PSPO cannot be applied.

I have also considered the case law you have referred me to. Again, I'm not persuaded that they have a direct bearing over the imposition of a PSPO.

Thank you for drawing your points to the Council's attention.

**Submission 6: Dr Rachel Quarrell (Coordinating Senior Umpire, Oxford college rowing events, and 30-year user of the Isis for rowing)**

**The case for a Waterways PSPO from rowers within Oxford**

*A conservative estimate has approx. 3000 different rowers, coaches and coxes using the Isis from college clubs each year, and several hundreds (possibly more than 500) more from the town clubs: City of Oxford RC, Falcon RC, the Oxford Barge Club and Oxford Academicals RC. These numbers don't include many canoeists and kayakers.*

**PROBLEMS:**

- a) Mooring of boats is currently long-term not short-term, and almost overwhelming in numbers. Many residential boats have not been moved for months. Properly managed 24-48 hour mooring periods would considerably reduce numbers and increase the amount of spaces between boats.
- b) The Isis (Folly Bridge to Iffley Lock) is by general agreement with all river users a launch-free zone, so any rescues of capsized rowers (and canoeists) needs to be done via coaches' throw-lines, not safety launches
- c) The many users of the towpath (athletes/coaches, strolling pedestrians/tourists, commuting cyclists) are greatly affected by the atmosphere and attitude of those who choose to live beside it.

**IMPACT:**

- 1) Long lines of moored boats, particularly where the towpath wall is not high (eg Donnington Bridge to the Isis Farmhouse) lead to areas where we are not confident we would be able to rescue a rower who had capsized.
- 2) Those who regard the towpath as their living area moor with heavy-duty pegs and ropes, which stretch across the cycling/walking path, and use the towpath and the bank beside their boat as a spare living/storage area, with chairs/benches/lumber/fuel spread around and often encroaching onto the path itself. Looks horrible and decreases safety for cyclists, including coaches trying to ride with their crews.
- 3) Some areas have been actively abused, with damage to fences, hedges and the bankside. The EA has to refill the safety throw-rings frequently as they're often damaged or removed.
- 4) Rowers and coaches have often experienced heckling (what I'm sure the perpetrators would like to consider 'banter') at the Head of the River, where residents of moored boats tend to congregate from around 7am onwards in good weather, sitting on the benches drinking lager and shouting abuse, mostly at women going past. I've experience this several times myself this year.
- 5) There has also been some discord in the area below Donnington Bridge, where at least one boat owner has taken offence at coaches riding past talking to their crews.
- 6) Many of the boats in all areas spew out vile black and grey smoke daily, which is not good for anyone, whether pedestrian, cyclist or athlete.

I forgot to add one specific - some of the mooring lines used to keep big heavy boats stationary for months have dug big holes in the bank, which then erode next time we have heavy rain, flooding, frost or a combination. The result is a collapsed bank or a

hole which then erodes from underneath and collapses, with the same problem - bank-mending needed. All three of the currently collapsed bank-sections on the Isis have been either provoked or exacerbated by large residential boats having swung off them for months at a time.

## Submission 7: Ed Surridge

Dear Councillors,

Perceived facts I request The OCC Scrutiny Committee consider pre this evenings meeting

In short I think that because of local legal, political and property concerns a best outcome to Oxford's waterway problems is running out of time as a lack of trust building and positive engagement has been present. Activists are becoming more aware of Oxford's problematic waterways situation and activists rather than clicktivists tend to work more often in the warmer months in the UK.

### UMBEG

Knowing that my boat locations have been of significant concern to UMBEG as I have attended perhaps 25% of the short ( written questions answered ) public sessions that were a part of UMBEG meetings since learning of its existence approximately 1 year after it was formed. I have been allowed some access to their agenda's and made one early FOI request to UMBEG meeting minutes.

### Problems

UMBEG OCC admin staff repeatedly promised to inform myself and others of UMBEG meetings times, dates and locations. These promises have been repeatedly renegeed on my OCC staff. Last year it was repeatedly confirmed to me by Richard Adams a later chairperson of UMBEG that I was no longer allowed permission to attend these meetings. This I have been informed ( after challenging this situation at a Jericho Community Association meeting ) by Councillor Colin Cook was not the situation and I think I understand how and why this addition error occurred.

I have made formal complaints to the Thames Valley Police and OCC officers with regard to me being physically prevented from obeying a legal Order served against me by OCC staff.

### Further information

Colin Cook did accept a request from me to a private meeting where I was able to inform him of what I thought best options to the land claimed concerns. Additionally I have been informed I can't recall how many times that I need legal advice. I have talked with Councillor Susanna Pressel twice on the land claims situations whilst attending here Councillor Surgeries in Jericho and Osney Ward.

I request OCC engages in an much increased positive form of community engagement with this issue and hope this committee can facilitate this. The sooner the better. I am sorry I might not be able to share further intended helpful information to this committee in advance. My laptop is not being cooperative and the library computer time is running out. I shall try.

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