

National Barge Travellers Association

Objection to revision to Smoke Control Orders: Response to Broxtowe Borough Council consultation on amendment of smoke control area

General

This consultation response is from the National Barge Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for Barge Travellers: itinerant boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has 1,500 members who travel on all the major navigation authorities' waterways and beyond. The NBTA deals with approximately 200 individual cases each year.

Objections

The NBTA objects to the revision to the Smoke Control Orders for the following reasons.

Inadequate time given for consideration and response

The timescale of the consultation is unclear but it appears that the consultation runs from 19th June to 7th August 2023, some seven weeks. The consultation gives insufficient time for proper consideration of the proposals and inadequate time to formulate a response. Seven weeks is not sufficient for proper consideration of such serious proposals, especially when the consultation period includes part of the school summer holidays. The duration of this consultation is too short and is not in accordance with good practice. The consequence of a consultation period that is too short is that it disenfranchises those whose views ought to be taken into account. This is the case here, as Barge Travellers who moor their homes in Broxtowe for part of the time may not be in the area during the consultation period and will not have been contacted directly by the Council to take part. Barge Travellers on Canal & River Trust (CRT) waterways are required to travel a range of at least 20 miles in their licence period, usually 12 months. This means they are likely to be outside the Broxtowe local authority area for the majority of the year. The timescale is severely skewed towards enabling the participation of local housed residents and the exclusion of itinerant boat dwellers.

Failure to target consultation at those most likely to be affected or to take account of the groups being consulted

There are significant barriers that prevent itinerant liveaboard boaters from taking part in local consultations. No information has been provided regarding how the consultation will reach boat dwellers, whether itinerant or permanently moored. The Council has not explained what efforts have been made to obtain itinerant boat dwellers' opinions and comments on the impact and practicality of bringing moored vessels into the ambit of its Smoke Control Areas. The timescale of the consultation is a barrier to the inclusion and participation of itinerant boat dwellers.

Insufficient reasons provided to permit of intelligent consideration and response to the proposals

No evidence has been provided that there is a problem with smoke emissions from moored boats in Broxtowe. The Council has not provided any information regarding whether it has received complaints from residents about smoke emissions from moored boats on the Nottingham and Beeston Canal, the Erewash Canal, the River Trent, in Beeston Marina or on any other waterways within the borough.

The lack of data about complaints means there is no clarity regarding whether the proposals are driven by hostility of local housed residents to boat dwellers or whether the proposed Smoke Control Order is likely to be used as a tool to remove boat dwellers from areas where the local authority or the housed population is opposed to boat dwellers.

No information has been provided regarding the number of moored boats and the total level and amount of smoke emissions from moored boats in the local authority area compared either to overall air pollution or to the quantity and type of emissions from bricks and mortar homes; industrial premises; construction sites; road transport; or the M1 motorway which is used by tens of thousands of NOx and Particulate emitting vehicles every day.

No definition has been provided in the consultation of what the Council considers to be a 'significant quantity of smoke from a chimney'. No information has been provided about how smoke emissions from chimneys will be measured, in relation to Ringelman Charts or otherwise.

No information has been provided regarding how the Council will ensure that itinerant boat dwellers will be able to tell whether they are entering the proposed Smoke Control Area or not, as these areas are not generally signposted either at the boundaries or elsewhere. Boaters could enter a Smoke Control Area with their stove alight, not knowing that smoke controls are in force or that they have crossed a local authority boundary, and be fined, especially if they have no smokeless fuel on board.

No cost-benefit analysis or Impact Assessment has been carried out regarding the costs to the Council or the impact of fining people who will typically not be able to pay the fine and may thus be vulnerable to being imprisoned or to their possessions, even their homes, being seized.

No alternative options proposed

Paragraphs 28 and 41 of the Supreme Court judgement in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56 state:

"28. But, even when the subject of the requisite consultation is limited to the preferred option, fairness may nevertheless require passing reference to be made to arguable yet discarded alternative options..."

41. ... Nevertheless, enough must be said about realistic alternatives, and the reasons for the local authority's preferred choice, to enable the consultees to make an intelligent response in respect of the scheme on which their views are sought."

Despite the existence of alternative options, including the availability of other enforcement powers, there is not even a brief reference to any possible alternatives to the proposed revision of the Smoke Control Orders in this consultation.

No evidence that DEFRA Guidance has been followed

There is no evidence that the consultation has been carried out in line with the DEFRA Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021. The short timescale means that itinerant boat dwellers who will be affected are likely to be excluded and will not have an opportunity to respond. The absence of an Equality Impact Assessment means that the needs of vulnerable groups, such as boat dwellers on low incomes, or who have mental health issues or physical disabilities, have not been properly considered.

Disproportionate impact compared to population

No information has been provided regarding the numbers of boat dwellers likely to be affected, or to compare the level of emissions from moored boats with the total level of air pollution. The estimated percentage of boat dwellers in the overall population of England and Wales is between 0.05% and 0.1% (from the Office for National Statistics 2021 Census data). This suggests that the level of smoke emissions from moored boats is *de minimis* compared to the domestic, industrial and transport emissions from the rest of the population of Broxtowe. It is therefore disproportionate to include moored vessels in the proposed revision to the Smoke Control Orders.

Significant adverse impact on boat dwellers

The proposed revision to the Smoke Control Orders will have a severe adverse effect on the quality of life of boat dwellers, especially Bargee Travellers: people who live on their boats without a permanent mooring. This is likely to penalise and punish people for the simple act of heating their homes, and in some cases for cooking and heating water. These are essential domestic activities without which people's homes are uninhabitable. Bargee Travellers are on some of the lowest incomes in the population, and most boat dwellers have so far been excluded from the Government's Energy Bills Support Scheme and Alternative Fuels payments of £400 and £200 in 2022 and 2023. Itinerant boat dwellers are excluded from the provisions in Schedule 12 of the Environment Act 2021 for local authority funding for adaptations to vessels to bring them into compliance with the Act. This means that many simply cannot afford to heat their homes using smokeless fuels; kiln dried wood and/or DEFRA-approved stoves. Smokeless coal and kiln dried wood are the most expensive forms of solid fuel. At present due to the steep increases in the price of all solid fuels, many boat dwellers have resorted to burning fallen or scrap wood or even old clothes to keep warm. Some boat dwellers have always heated their homes using scrap or fallen wood because that is all they can afford.

No Equality Impact Assessment or welfare assessment carried out

The Council is bound by the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, which requires public authorities to have due regard to a number of equality considerations when exercising their functions. However, the Council has not provided an Equality Impact Assessment of the effect of the proposed revised Orders with this consultation. This means that insufficient evidence has been provided regarding the impact of the proposed revision to the Smoke Control Orders on boat dwellers and Bargee Travellers who have protected characteristics such as disability, old age or pregnancy, which may mean that they need to stay within the local authority boundary for longer in order to access medical and other services. In these cases the proposed application of the

Smoke Control Order to moored vessels would have a greater impact on their ability to live in their homes.

The Council does not appear to have carried out a welfare assessment regarding the proposal, or an assessment of the impact of the proposal on the number of boat dwellers who may as a consequence seek support from the Council's Household Support Fund. Therefore insufficient information has been provided, contrary to the Government's Consultation Principles.

Article 8 ECHR

No account has been taken of the right to respect for private, family life and home under Article 8 of the European Convention on Human Rights (ECHR). This is not even referred to. The proposed revision of Smoke Control Orders would penalise boat dwellers for the simple act of heating their homes, cooking and heating water. Unlike houses and flats, most boats do not have any gas or electric heating. The solid fuel stove is, for the vast majority of boat dwellers, the only way of heating their homes and for some also the only way to cook and heat water. Without solid fuel stoves, boat dwellers' homes would effectively become uninhabitable. This is a grossly disproportionate proposal and it will violate the rights of boat dwellers to respect for their homes under Article 8. The fines of £175 to £300 would impoverish Bargee Travellers, who are typically on the lowest incomes.

Conclusion

The proposed revision to the Smoke Control Orders will have a disproportionate adverse impact on boat dwellers, thus violating their rights under Article 8 ECHR and the Equality Act 2010. There is a danger that, if implemented, the proposed Smoke Control Order may be used as a tool to remove boat dwellers from the local authority area.

The consultation does not meet criteria in the Government Consultation Principles 2018; in *R(Moseley) v London Borough of Haringey* [2014] UKSC 56; and in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168. The consultation does not meet the DEFRA Guidance to local authorities on the application of smoke control areas to moored vessels under the Environment Act 2021.

The consultation is therefore flawed and thus challengeable by way of Judicial Review. For the reasons stated above, the proposed revision to the Smoke Control Orders should not be implemented.

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