

## RTS Policy towards houseboats

The River Thames continues to evolve. The Thames is increasingly used as a place on which to live, and there are similar pressures from those wanting to live afloat on the urban canals. The RTS has always included among its members those who live on the river. What is the RTS policy towards live-aboards and should we be encouraging yet more houseboats to have their base on the Thames?

Although newly articulated, much of the thrust of this policy is long-standing and similar to a policy statement issued many years ago<sup>i</sup>. The RTS believes the river is for the wider enjoyment of the public, with the space on and by the river to be shared among many. No one type of user should be allowed to squeeze out or otherwise disadvantage others, or risk damaging what is so special about the Thames we love. Houseboats and those who live on them must be seen in the wider context, going beyond the riparian owner, the navigation authority and other river users, to all those who appreciate the Thames.

Some of the existing houseboats/residential moorings may not comply in full with this restating of RTS policy but the RTS has no intention of upsetting the rights of those who currently live afloat legally on the river. The focus here is the potential for new moorings of Thames-based houseboats.

### Definitions

This policy is about houseboats, but not all the Environment Agency (EA) registered 'houseboats' are lived on, since the EA's definition includes traditionally-used Oxford College Barges. There are many other floating structures registered by the EA as launches, even though they are the main place of residence for their owners. Other floating structures that in common parlance we would all call houseboats, because they are non-mobile and based on pontoons, after a recent Court case are now no longer counted as vessels that the EA is able to register, as houseboats or anything else<sup>ii</sup>. The Port of London Authority (PLA) does not licence houseboats, but recognises some of them by charging River Works Licences (RWLs) using a residential boat formula, but there are also other boats lived on in the Tideway covered by other types of RWL or by none.

The residents of some of these Thames houseboats pay Council tax direct at their mooring, and others pay indirectly through the mooring charge and yet others are so mobile they quite legitimately avoid this tax. Some residential moorings have full planning permission as such, but the situation for many other residential boats is less clear-cut. This laborious description helps illustrate how the system is confused and confusing, with many apparent anomalies. The topic of this RTS policy is floating structures on the river Thames that form the main place of residence for their occupants, whether or not they are self-mobile and whatever their status in the registration, planning or Council Tax systems. As the most useful shorthand, they are being called here 'houseboats', even though the owners of some of the more active cruising residential boats object to their vessel being labelled with this term.

There are pressures on the houseboat owner to go bigger, generating more living space, with fees to the mooring owner often based on the length alone. There are few financial penalties in the EA registration system or with residential RWLs on tidal waters for bigger boats<sup>iii</sup>. Many new houseboats now have freedom from VAT, even if mobile<sup>iv</sup>. Stamp duty is not charged on houseboats, but it is on

a minority of moorings. There is a huge shortfall in housing and especially in affordable housing. All this helps explain why the scale and scope of the pressures for/from houseboats are now greater than they have ever been.

#### Lead Responsibility

The RTS works closely with the navigation authorities, ie the EA and PLA, but on matters of houseboats, the lead public body should be the appropriate Local Authority. Many councils seem uncertain how they should deal with houseboats in planning terms, since these count as chattels, with residential moorings regarded a sui generis use rather than a 'dwelling house'<sup>v</sup>. However, subject to a veto on navigational grounds from the EA or PLA, local authorities have the powers to decide whether there should be new residential moorings or a change of use of leisure moorings to permanent residential ones (see box 1)<sup>vi</sup>.

#### **There is demand for new residential moorings**

There is great demand for residential moorings near London and other urban areas. If extensive infrastructure is needed and/or riparian land prices are high, as with much of the Tideway, new residential moorings can be very expensive. A few additional moorings are likely to be more of the same, making no contribution to the shortage of affordable places to live. This may not apply to moorings in existing docks and marinas, or on more sheltered parts of the river, where conversion from recreational to residential use may not require the same degree of capital investment. When riverside housing development is taking place, the creation of adjacent residential moorings should be being considered. With the right controls, as part of Local Authority planning requirements, this may help satisfy a required quota of affordable housing.

#### **But keep new permanent moorings away from the main stream**

The RTS is against the river being taken up and so encroached upon for purposes which could just as easily be on the land, and this is also articulated in many local plans including the London Plan<sup>vii</sup>. Houseboats which are static on the main river are denying river space permanently to others – a planning issue as well as interfering with the general right of navigation. The RTS standard policy is that except for the most short-term, such moorings should generally be provided off-line in marinas, canals, docks, in backwaters or inside islands/aits, or be clustered among others associated with boatyards or private residences. Just as housing spread out across the countryside is to be avoided, the same applies to moorings of all types, but most especially those for bigger boats and any that move infrequently (like most houseboats). The river-scape of the Thames needs to avoid the continuous linear moorings now being seen on parts of the canal system.

#### **Residential moorings are a matter for the local community**

The riparian Local Authority (LA) should be aware of the numbers living on the river in their area and the demand for residential moorings<sup>viii</sup>. Local Authorities should consider all types of mooring (residential, leisure, commercial and visitor) in their local plans, placing them within a local strategic context, considering where appropriate Green Belt, Metropolitan Open Land (MOL) and Conservation Areas<sup>ix</sup>. In some special localities, the local policy may be for no additional permanently moored boats.

With Local Authorities in the lead, the RTS argues that potential individual new houseboat moorings should be scrutinised according to similar criteria as are applied to other planning matters. Public consultation means local views can be taken into account and planning decisions become subject to the local democratic process. Changing existing non-residential leisure moorings to those with residential status is also a matter for the LA, potentially complicated if there is some pre-existing approved residential use within the same planning unit. If LAs are not on the ball, formal approval for residential use by houseboats can evade any challenge on the usual planning criteria, via a Certificate of Lawful Existing Use or Development (CLEUD)<sup>x</sup>.

There are various recommendations for the facilities which could/should be provided for those at residential moorings. These matters are primarily for the mooring owner and residents, with the interests of the RTS limited to any potential wider environmental impact (eg mains supplies would negate the need for on-board generators).

The RTS may well oppose new residential moorings through the planning system unless they match the policy articulated in this document: local members should please alert the relevant RTS branch to any new applications in good time. The RTS expects that the PLA will not approve RWLs for residential use nor the EA approve a claimed home mooring or accommodation licence for a houseboat mooring unless there is appropriate prior LA planning approval, with sign-up too from the riparian land owner.

### **Exert planning controls on the boats themselves**

The RTS argues there should be as rigorous planning control on static houseboats as on riverside buildings. Static houseboats involve a change of use of the land over which they are moored, and there is scope in any planning approval for a new residential mooring to be subject to conditions which specify the type of vessel to be moored. Those hoping only to see pretty 'boat-shaped' houseboats will find definitions problematic, with being 'historic' or self-mobile not much help either. One lived-in deck level can generate a height above the water of around 1.5m (many narrowboats) or at least 2m more than that (some pontoon-based new-builds). In very special locations, approval of each and every houseboat may be needed, but for most moorings, the basics are as suggested in box 2<sup>xi</sup>. It may also be important to limit what could be counted as permitted development in the future, for when houseboats get replaced, explaining that even if the footprint is the same, added height might not be acceptable. There are many negative consequences for others from the 'wrong' sort of houseboats, such as those that are over-large for the setting and/or spill out noise or light pollution. Especially next to the riverside path, there may be a need for height controls, otherwise views of the river are blocked for others. Those large 2+ story 'American-style' square-sided houseboats as promoted in certain TV programs are suitable only in the lower/wider reaches and then only in exceptional circumstances.

### **Continuous cruisers should be just that**

RTS supports boats cruising all year round, and it should not matter if the vessel that does this is regarded as the owner's main place of residence. Mooring for long periods at the same place creates a change of use, and the potential for adverse possession, and should be resisted for those who purport to be continuously cruising<sup>xii</sup>. Residential 'squatters' – who over-stay at moorings without permission – are especially unwelcome (Box 3).

### **Minimise exploitation of boat residents:**

- There is a long history of exploitation of boat residents by commercial operators of residential moorings, with many sharp practices. Residents have little legal protection, not even from harassment. So ideally, new moorings should be owned and/or run collectively by the boat owners (eg Hermitage Moorings, Wapping) or by a charity (Chiswick Pier Trust) or by the public sector (eg South Dock, Southwark).
- Where houseboats are mobile, there are more options of moving on if things get tough.
- New moorings should not be created by displacing established houseboats which could thereby end up as squatters elsewhere. The shortfall in moorings is such that static houseboats without one can have no value<sup>xiii</sup>.
- Potential new boat owners need to be alert to the many scams in the buying and selling of houseboats<sup>xiv</sup>
- Living afloat should be owner-occupation<sup>xv</sup>. Residents of multiply-occupied boats are not currently covered by Housing of Multiple Occupation (HMO) or indeed any other legislation<sup>xvi</sup>. The system should offer them some protection and does not at present

### **All boat owners/residents should pay their way**

- We need a fair and explicit system for the registration/licensing of all vessels that are lived on. The newly-exempted static pontoon-based houseboats on the non-tidal river should pay their share to the upkeep of the river: this may require changes to legislation.
- Boat residents should make a fair contribution to local Council Tax – this maybe the price for becoming ‘official’ for those currently living at a mooring regarded as non-residential
- The VAT rules on new boats for residential use have potential adverse consequences for congestion on the waterways, so aspects of this should be looked at again.
- If registration fees are expected, they should be paid

### **Key messages for Riparian Local Authorities**

- Include houseboats/residential moorings in the local plan. Explain what change in numbers or types of existing houseboats would be beyond any permitted development and so need formal planning consideration
- Take applications for new residential moorings through the planning system, and in addition to the standard issues, question and control the appearance of the vessels. Consult the EA or PLA as appropriate and ensure their approval, especially on navigational grounds. Ensure the local RTS branch is among the consultees
- Know who is living on boats locally, and take enforcement action against those living without permission permanently at any clearly inappropriate location, to pre-empt a CLUED application asking to be made official
- Consider the provision of a residential mooring run by the community/charity/council as the contribution to affordable housing from any riverside development.
- Only approve a new riverside development if the future is understood for residents of any existing houseboats that would get displaced

- Where a historic harbour or collection of historic boats would be an attraction, work with the voluntary sector to help create this: lived-on historic boats may help off-set the costs and provide security<sup>xvii</sup>

### **Box 1 Houseboats in the Planning system**

Although houseboats are considered to be chattels, the Town and Country Planning Act 1990 can be applied to:

- The land-associated built development (eg much of the mooring infrastructure)
- Change of use of the land over which the boat is moored for more permanent boats, such as houseboats
- A material change of use if residential boats come to dominate a mixed-use mooring/marina: decided on the basis of fact and degree as well as the particular circumstances
- Conditions attached to planning approval can be used to limit the size and appearance of boats, indicating what subsequent changes would fall outside permitted development (see box 2)

### **Box 2. Suggestions for The Basic Planning Controls** for new Thames-based houseboats (to be added to in especially sensitive areas)

- Not too big to reach a dock/slipway for maintenance
- Maximum aircraft specified for the great majority (<85%?) of the superstructure (ie excluding any masts and funnels)\*
- Black water controls now and maybe systems to prevent discharge of untreated grey water to be in place by some date in the future, eg 2028
- Prevention of adverse discharges to the air, so these are no less than the requirements on nearby houses [ie not to exploit the boat exemptions of the Clean Air Act 1993 s44(6)]
- No display advertising unless part of original boat livery
- Not to be let for multiple occupation
- Sensitive/rural reaches – all lights to be shielded to limit upwards spillage

\*Max aircraft suggestions (for local discussion):

Non-tidal reaches alongside Thames path	2.5 or 3m
Non-tidal reaches non-path bank	3.5m
Tidal river alongside Thames path	4m
Tidal river non-path bank	5m

Also recognising there are existing long-standing communities of bigger boats eg Taggs Island, and the need to make further allowance especially below the Thames barrier for vessels held some way from the bank

### Box 3 Residential Boaters

The RTS asks that:

- All boat residents play by the rules, including local byelaws
- Temporary moorings should be used only for the permitted period
- Continuous cruisers should keep moving
- Mooring should only take place at approved locations with the permission of the riparian owner

<sup>i</sup> The River Thames Society. Policy Statement No. 1/84 (from 1984?) Code of Practice on Houseboats and Mooring Sites.

<sup>ii</sup> See EA v Gibbs and Parker [2016] EWHC 843 (Admin)

<sup>iii</sup> The registration fee on EA waters is determined by the width and breadth of the vessel, but the height/aircraft is ignored. The fee to the PLA for RWLs for residential use makes some reduction for narrowboats, but there is no maximum width and the height/aircraft is ignored. Both formulas charge a square box at the same rate as a shapely hull with slender bow and stern, even though the water-space occupied (and the internal living space) are very different.

<sup>iv</sup> Under VAT notice 701/20 Caravans and Houseboats, a new build houseboat is a floating decked structure supplied zero-rated if (a) designed or adapted for use as a place of permanent habitation and (b) it does not have the means of, and which is not capable of being readily adapted for, self-propulsion. Under VAT notice 744c Ships aircraft and associated services, zero-rating applies to 'qualifying ships' of a gross tonnage not less than 15 tons which are neither designed nor adapted for use for recreation or pleasure. From 2009 replica Dutch barges have been treated the same as ones built originally for carrying, with recognition that being able to be used for cruising, ie for recreation and pleasure, did not negate zero-rating for those used as the main place of residence. Note that because of the way tonnage is calculated, narrowboats can never reach 15 tons so will always attract standard rate VAT. Likewise yachts and cruisers even if the main place of residence will be standard rated for VAT.

<sup>v</sup> Houseboats are not a dwelling house under class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended

<sup>vi</sup> 'The point at which the mooring of a residential boat on a waterway departs from an ancillary use of the waterway (which usually would not need planning permission) and moves to a material change to residential use (which usually would need planning permission) needs to be decided on the basis of fact and degree as well as the particular circumstances of the case'. AINA Advisory Document. Residential Use of Waterways 2011

<sup>vii</sup> 'Generally, permanently-moored vessels and development into waterways should only be permitted for water-related purposes....The waterways should not be used as an extension of developable land in London, nor should parts be a continuous line of moored craft' from 9.17.2 in the draft London Plan Aug 2018 revision

<sup>viii</sup> . Housing and Planning Act 2016 part 5 para 124 Assessment of Accommodation Needs on the 'duty to consider the needs of people residing in or resorting to their district with respect to the provision of....(b) places on inland waterways where houseboats can be moored. ...'Houseboat' means a boat or similar structure designed or adapted for use as a place to live'

<sup>ix</sup> AINA Advisory Document. Residential Use of Waterways 2011

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<sup>x</sup> CLEUDs are Certificates of Lawful Existing Use or Development under s191 of the Town and Country Planning Act 1990. Many boats are lived on unofficially, and have been for years at certain mooring sites. Whatever the planning merits, and provided there has been residential use within the planning unit for the last 10 years, this can lead to an application for a CLEUD, which then prevents enforcement action. In spite of local objections, there has been a successful application recently for additional residential boats at Kew Marine. A bigger application at Cadogan Pier was withdrawn by the applicants, in the face of questioning of the extent of residential use. Both these applications were in conservation areas adjacent to listed bridges, so could have been expected to raise especial problems for the applicants if taken through the standard planning application process. Note no planning conditions can be attached to a CLEUD, but that should not prevent challenge on operational development grounds were much larger boats to be substituted for the existing boats.

<sup>xi</sup> A more detailed document with examples is in draft. For comparison purposes, maximum air draft for the Oxford canal is 1.83m, for Folly Bridge 3.12m, Windsor Bridge 4.01m, Blakes on the K&A 2.4m, Kew Bridge at MHWS 5.2m and the Freycinet central section of the French canals 3.50m. A well-known example of control of houseboats is that for Shoreham – ‘Good Practice Guide for Houseboats’ May 2007 on [www.adur-worthing.gov.uk/adur-ldf/spd-and-guidance/#gpg-houseboats](http://www.adur-worthing.gov.uk/adur-ldf/spd-and-guidance/#gpg-houseboats). Section 24.8 in Development Control Practice has specific commentary on the subject of houseboats.

<sup>xii</sup> Adverse possession occurs when a person occupies land for so long unchallenged that they can then claim ownership. There are precedents for being able to acquire title by adverse possession of a river bed by mooring a vessel in the waters above it – see *PLA v Ashmore* [2010] EWCA Civ 30 [2010] 1 All ER 1139. See also *Nigel Moore v British Waterways Board* Appeal ruling 2013 on [www.bailii.org/ew/cases/EWCA/Civ/2013/73.html](http://www.bailii.org/ew/cases/EWCA/Civ/2013/73.html).

<sup>xiii</sup> This judgment on Hampton Riviera is just one example of a brand new houseboat declared to be of minimal value because without a mooring, HC-2015-004402 & HC-2015-003785 see on [www.falcon-chambers.com/images/uploads/documents/DJURBERG\\_judgment\\_1\\_Sept\\_17.pdf](http://www.falcon-chambers.com/images/uploads/documents/DJURBERG_judgment_1_Sept_17.pdf)

<sup>xiv</sup> Hilary Pereira. ‘Buyer beware’, so here’s a checklist for those planning to buy a houseboat on the Thames with what you need to ask on [www.riverthamessociety.org.uk](http://www.riverthamessociety.org.uk)

<sup>xv</sup> This is the view from the Residential Boat Owners Association (RBOA) and the RYA. Many aspects are unlike living on the land with houseboats built and/or adapted without the safeguards that come from the Building Regulations. An intimate knowledge of the houseboat that comes from ownership helps ensure life afloat is safe.

<sup>xvi</sup> Houses of Multiple Occupation under the Housing Act 2004, are where at least 3 people who are not from the same household share facilities like the bathroom and kitchen, with a special regime for those with 5 or more unrelated occupants. Local Authorities have powers of inspection. There is no equivalent for houseboats

<sup>xvii</sup> Approach the Maritime Heritage Trust for advice on [www.maritimeheritage.org.uk](http://www.maritimeheritage.org.uk)

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