



East Anglian Waterways Association Ltd

Please reply to: David Mercer

david.mercer@eawa.co.uk

Mr Irven Forbes
Anglian Waterways Manager
Environment Agency
Waterside North
Lincoln
LN2 5HA

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Dear Mr Forbes

Proposed Sale of 3 plots of riverside Land at Ely, Cambridgeshire

On behalf of the Chairman and directors of East Anglian Waterways Association, I write to express our concerns about the proposed sale of riverside land at Ely, currently in use as boat moorings.

East Anglian Waterways Association is a charity first established in 1958 to work for the restoration, preservation and improvement of all the inland waterways in East Anglia for the benefit of the general public. With those aims clearly in mind and in this instance we consider the Environment Agency's proposals to dispose of such a vital and significant waterway asset for short-term capital gain as a clear and unacceptable derogation of its statutory duties and responsibilities to licence-paying boaters, recreational visitors and to the local businesses serving their needs.

We are particularly concerned about the effects on three local businesses providing essential services to boaters and other visitors and the apparent lack of any consultation on the matter or publication of any impact assessment. A more detailed statement of our position on this serious matter is attached.

We earnestly request that:

- a) Any proposed sale is halted until our concerns have been properly addressed.**
- b) Current bidders are notified through the agent of our concerns and possible action.**
- c) You kindly confirm to us in writing that (a) and (b) have been done.**

Failing a satisfactory response, East Anglian Waterways Association Ltd reserves the right to commence injunctive proceedings to halt or delay any agreed sale and/or to seek permission in the Administrative Court for a judicial review of the matter on grounds which may include:

1. Illegality, given the provisions of the Anglian Water Authority Act 1977.
2. Unfairness to existing leaseholders and users in general by failure to consult adequately (or at all) with them.
3. Breach of a reasonable legitimate expectation that the EA should meet its statutory obligation and duty to licence-holders and others to promote recreational boating on these waters.

In view of the seriousness of this matter I have copied this letter to the EA Chief Executive, the Executive Director E & B. and the Secretary of State for DEFRA. We look forward to hearing from you.

Yours sincerely

David Mercer, EAWA Secretary
For and on behalf on Roger G. Sexton, EAWA Chairman

East Anglian Waterways Association - Position on Sale of EA Moorings at Ely

Background

The Environment Agency, as navigation authority for the river Great Ouse, has placed on the market three sections of riverbank at Ely, Cambridgeshire with a total length of 317 metres currently used for mooring of boats. The moorings in question were first established as part of a major flood defence and river channel improvement programme by the Great Ouse River Authority in the 1960s with subsequent major and costly refurbishment to a high standard a few years ago.

Offers are to be made by sealed bids to the instructed agents no later than mid-day on 8th September 2017.

Ely is a popular and vibrant boating and tourist venue and a centre for the only holiday boat hire operation on the Great Ouse system. East Cambridgeshire District Council encourages boating visitors to the city by providing time-limited free moorings at Riverside but these are always in high demand which exceeds capacity at busy times. Well over 2,000 visitors each year choose to hire for their holidays and short breaks from a wide range of well maintained narrowboats and motor-cruisers offered by Bridge Boatyard, which has been established here for well over 40-years. Along with so much of its historic and cultural interest, Ely is steeped in recreational boating history. The Fenland hire fleet built by Appleyard, Lincoln and Co. was first established at Ely Riverside in 1949 although the Appleyard family had been building and hiring out small craft here for many decades before that.

It is widely recognised that boat hire adds to the vibrancy of the river in general, providing economic benefits to other businesses such as shops and pubs both in our riverside towns and more rural locations. A hire boat holiday is also acknowledged to give many people an affordable introduction to boating and to be the key factor in encouraging personal boat ownership and a direct contribution to cost of essential river maintenance through boat licence fees.

The riverbank plots offered for sale are described here with their current use and comprise:

Lot 1 – 95.45 m. downstream of the railway bridge and currently used for operations in relation to the historic ‘Boat Yard’ and cut once forming the main workshops of Appleyard Lincoln & Co. and now run as a highly regarded boat maintenance business providing essential skilled services to boaters. Part of the riverbank is let separately by the EA on a short-term lease to a large hotel barge. The guide price is £60,000.

Lot 2 – 98.43 m. between the railway bridge and the cut into the small marina where the Bridge Boatyard hire fleet is serviced. The marina itself is too small to accommodate and service the entire fleet and this section is currently licensed to Bridge Boatyard to facilitate their operation. Bridge Boatyard often kindly permits visiting boats to use parts of this stretch of riverbank on a free and informal basis at times when its own fleet is absent, thus adding useful overall short term visitor mooring capacity. In addition to hire craft operations the boatyard has gained a reputation for assisting all boaters both in emergencies and with day-

to-day needs such as water, fuel and refuse disposal. The bankside was extensively refurbished by the EA a few years ago and provided with a full length anti-slip durable mooring platform, secure mooring bollards and re-seeded grass area separating it from the public footpath. The guide price is £60,000.

Lot 3 – 123.97 metres of bankside between the Bridge Boatyard marina cut and Ely High Bridge. It was similarly refurbished by the EA a few years ago and provided with a durable anti-slip mooring platform, secure mooring bollards and re-seeded grass area separating it from the public footpath. It appears to be currently let on individual short term leases mostly to residential narrowboats although there are no facilities such as water or waste disposal at the site. The guide price is £75,000.

The Environment Agency's position:

The Agency claims that it has been looking for some time to sell assets that are “surplus to its operational requirements” and is required by government to achieve the best value and dispose of all surplus assets in an open and transparent manner. It is on this basis that the Ely moorings are being advertised for sale with a commercial agent and are to be sold to the highest bidder.

The Agency also claims to have warned at least some of its existing lease or licence-holders up to 12-months ago that a sale of these assets was under consideration and it had consequently only renewed leases/licences on a short-term basis.

The concerns:

The City of Ely with its magnificent cathedral (Ship of the Fens) and historic riverside is an enormously popular tourist destination for boaters and other visitors. Its vibrant riverside, where recreational boats of all types share space with both residential boats and working craft of diverse types, shapes and sizes, is fairly unique on the inland waterways system and certainly on the Anglian waters managed by the Environment Agency. It is particularly cherished by boaters who in recent times have been delighted to see improvements in management of the visitor moorings owned by the council and greater recognition of the importance of these vital assets.

But the situation remains rather fragile, relying on adequate facilities for mooring and other essential services being made available at affordable cost.

The Environment Agency's proposals which, in putting both the Great Ouse hire fleet and a historic working boatyard at risk and decreasing the availability of short-term visitor moorings potentially endanger the long-term future of Ely as a thriving boating centre. Given the current use and importance of these moorings it is inconceivable how they can possibly be considered “surplus to operational requirements”.

It is a very short-sighted policy which blatantly ignores the EA's statutory duty to promote recreational use of these waterways. It sacrifices longer term and increasing revenue for the Agency for a once-only and relatively insignificant capital gain.

The Environment Agency has a statutory duty in respect of the Anglian waterways under its current stewardship to ensure that those waterways are put to the best use for the purposes of recreation and leisure. A very recent (navigation charges 2018) consultation paper from the Agency states that the EA's navigation department is:

- ***“Reviewing our rental agreements when they come up for renewal and applying market rates.”***
- ***“Improving and increasing moorings available to visitors.”***
- ***“Working to establish new commercial income opportunities.”***
- ***“Working to open up our sites for sponsorship and commercial income opportunities.”***

The proposals to sell off assets upon which vital riverside businesses, navigation licence-payers and visitors and the local economy depends flies in the face of every one of those claims and renders them entirely disingenuous.

It is apparent that the proceeds of any sales will not go in the navigation budget to fund waterways maintenance or improvement but will go into central government funds.

If the Agency was genuinely to review rentals on renewal and negotiate fair market rents with existing lease-holders to establish a reliable future revenue stream there could be little valid complaint. Instead it seeks to utterly abandon both its moral and statutory responsibilities to those leaseholders and their customers by disposing of vital assets for short-term capital gain.

Clearly, at Ely the Agency has no intention to improve and increase moorings available to visitors and the policy to dispose of these assets demonstrates exactly the opposite.

“Working to establish new commercial income opportunities” cannot be achieved by sale of existing revenue producing assets. Sound management of those assets is all that is required.

The Agency's claim to be “opening up our sites for sponsorship and commercial income opportunities” can also be seen to be spurious nonsense in relation to the disposal of the established revenue producing assets at Ely which, managed properly in line with the EA's statutory duties, undoubtedly have excellent longer-term potential to produce a regular and growing income stream for the navigation budget.

Similarly, the EA's claim within the same navigation charges document to have “an ongoing wider programme to deliver a sustainable service that meets the needs of our different customers as best we can” is exposed as meaningless spin when considered against this proposed course of action.

Despite some of the EA's claims, East Anglian Waterways Association has seen no evidence of either proper consultation on this matter with current leaseholders and customer groups or any sign at all of an impact assessment. That is a disgrace.

EAWA suspects that this proposed sale of a vital local waterway asset at this time may have its roots in current discussions about a future transfer of the EA's navigation responsibilities to Canal and River Trust. It is thought unlikely that C&RT would be permitted to dispose of vital waterway infrastructure in this manner.

The Legislation:

The Environment Agency's stewardship of our local waterways is largely governed by the provisions of the Anglian Water Authority Act 1977. Although it pre-dates the EA's control it is still the statute that defines most of the Agency's duties on Anglian waters. That Act provided for the development and good management of our rivers and waterways for recreational purposes. It was seen as a contract with users of the waterways providing improved management and performance in return, in the case of boaters, for imposition of registration charges.

The preamble to the Act describes how the commercial navigation of our waterways had diminished but the use for boating and other forms of recreation "has increased and will continue to increase" and how "it would be of public and local advantage to foster, improve and extend the use of these rivers and waterways for recreational purposes."

More specifically, at Section 8, the Authority is required to "take such steps as are reasonably practicable to maintain the main navigation channels and navigation ***works** of the waterways ... to at least as good a standard for the purpose of navigation by pleasure boats as that to which they were maintained in the period of nine months immediately preceding 8th December 1975."

(A very recent High Court judgment – Environment Agency v Barrass [2017] EWHC 548 (Admin) although of limited application to EA Anglian waterways never the less gives a clear indication that docks and moorings are generally to be considered as navigation **works.)*

At Section 11, the general duty of the Authority is defined – "The Authority shall take such steps as are reasonably practicable to ensure that a recreational waterway is put to the best use for the purposes of recreation and the occupation of leisure having regard to its other lawful uses."

Section 12 further defines the Authority's general powers to include the "maintenance and improvement of existing works and to place, lay down, maintain and use moorings in the recreational waterways or on the banks thereof on land owned by or leased to the Authority."

Section 18 of the Act empowers the Environment Agency to make byelaws in relation to the recreational waterways for a number of purposes, including at (g) "to regulate the placing, maintenance and use of moorings in a recreational waterway". Current byelaws control the method of mooring and designate a maximum stay of 48-hours at moorings provided by the Agency. However, because of those powers being vested in the Agency under Section 18 all other authorities along the river are barred from creating byelaws to control moorings under their control by Section 235(3) of the Local Government Act 1972. This then imposes a unique duty and responsibility on the Agency, as the only authority empowered to control moorings, in fulfilling its statutory obligation to ensure best recreational use of the waterway. Selling off Agency owned moorings into private ownership is inconsistent with the duty to ensure best recreational use of the waterway.