

REPORT OF THE DEPUTY DIRECTOR (PLANNING AND COMMUNITY STRATEGY)  
TO THE DEVELOPMENT CONTROL COMMITTEE  
17 NOVEMBER 2008

**Enforcement Programme**

**1.0 Introduction and Report Summary**

- 1.1 This report seeks to up date Members on issues still outstanding following the report considered by Committee on 12<sup>th</sup> May 2008 (copy of report and Minutes attached as Appendix 1).
- 1.2 The contact Officer for this report is Paul Yaxley, Enforcement Officer (01235 540352).  
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**2.0 Recommendations**

- (a) ***Total number of boats moored in the Abingdon marina exceeding agreed numbers.***  
*That no action be taken against boats moored on the 113 permitted moorings.*
- (b) ***Provision, location and use of the 20 overnight moorings.***  
*That Members allow time for discussions to be held with the owners of the marina, with the prospect of a revised proposal for the variation of the Section 106 Agreement being made, before deciding whether to take enforcement action in relation to the lack of overnight moorings at the marina.*
- (c) ***Moored boats extending beyond the western limit on the Marina application site.***  
*That no action be taken against any boat, of less than 4 metres beam width, which may be moored directly to any of the six western most finger pontoon moorings, two of which are located on the western end of each of the three main east west pontoon arms of the marina.*
- (d) ***Storage of box trailer in the secure compound.***  
*That no action be taken against the box trailer in question, other than requesting that it be painted a dark green colour.*
- (e) ***Permanent Residential Moorings.***  
*That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to decide whether enforcement action should be taken against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon, and any individual(s) residing on a boat if it is established that any boat(s) in the marina (apart from the Marina Manager's boat) are being used as an individual's sole or a principal place of residence.*

### **3.0 Relationship with the Council's Vision, Strategies and Policies**

- 3.1 The content of this report is in line with objectives A, C and D of the Council's Vision Statement.
- 3.2 This report relates to Enforcement Strategies 13, 14, 15 and 16 and complies with Enforcement Policies E2 and E3.

### **4.0 Builders Ede - Abingdon Marina**

- 4.1 Committee may recall the report considered on 12<sup>th</sup> May 2008 (copy of report and Minutes attached as **Appendix 1**), this report updates Member on issues still outstanding following that report.  
Currently there are believed to be 5 issues outstanding:
1. Total number of boats moored in the marina exceeding agreed numbers.
  2. Provision, location and use of the 20 overnight moorings.
  3. A new issue of other boats extending beyond the western limit of the marina application site.
  4. The storage of a small touring caravan and box trailer in the secure compound.
  5. The permanent residential use of a number of moorings.

### **5.0 Total number of boats moored in the marina exceeding agreed numbers**

- 5.1 Eight new finger moorings, ABG/742/42, were installed on the 11<sup>th</sup> April 2008 and are in use. An application to vary the terms of the Section 106 Agreement (Clause 8) 'To increase the number of moorings from 100 to 113' at the marina in accordance with the planning permission (ABG/742/42) was formally submitted. Committee considered report 109/08 of the Head of Legal Services to vary the terms of the Section 106 Agreement dated 3<sup>rd</sup> December 1998 at the meeting on 27<sup>th</sup> October 2008 and resolved:- 'That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Chair of the Development Control Committee to approve application ABG/742/43 subject to the negotiation of a Deed of Variation Under Section 106A of the Planning and Compensation Act 1991'.
- 5.2 It is therefore recommended: *That no action be taken against boats moored on the 113 permitted moorings.*

### **6.0 Provision, location and use of the 20 overnight moorings**

- 6.1 Planning permission ABG/742/34 was granted in 1998 subject to a Section 106 Agreement which stipulated that 20 of the 100 moorings should be for overnight stay only. An application to vary the terms of the Section 106 Agreement, described as 'Modification of Clause 3.1.1 of the Fourth Schedule to remove the reference to overnight moorings, the deletion of Clauses 10 & 11 of the Fourth Schedule & modifying Clause 12 of the Fourth Schedule to simply refer to overnight moorings in general', at the marina was formally submitted. Committee considered report 110/08 of the Head of Legal Services to vary the terms of the Section 106 Agreement dated 3<sup>rd</sup> December 1998 at the meeting on 27<sup>th</sup> October 2008 and resolved:- To defer making a decision to allow discussions with the owners to take place to clarify where any future overnight moorings would be located the number of moorings to be reserved and charges proposed. A further verbal report on this matter is expected to be made to this meeting.

6.2 It is therefore recommended: *That Members allow time for discussions to be held with the owners of the marina, with the prospect of a revised proposal for the variation of the Section 106 Agreement being made, before deciding whether to take enforcement action in relation to the lack of overnight moorings at the marina.*

## 7.0 **Moored boats extending beyond the western limit of the marina application site**

7.1 Committee may recall that in the 12<sup>th</sup> May report reference was made to one boat, "Heron Island", extending beyond the western limit of the marina application site, when it was resolved that, in that particular case, no further action be taken. Comments attributed to Mr Neil Boston are minuted: - *'With respect to recommendation (d) he stated that the offending boat, Heron Island, extended beyond the permitted zone, by 0.5 – 1.5 metres on a beam width of 3.8metres. He advised that this had meant that 3.2 metre of the boat lay beyond the permitted zone and enforcement action should be taken. Furthermore he commented that it could be demonstrated that all of the boats on the westernmost pontoons projected beyond the permitted zones and enforcement action should be taken'*. This point has been reiterated in a further letter of complaint received at the end of August which concluded with *'To summarize, the Council have a duty to limit all public moorings and boats to the east of the blue line. With the balance in the basin already upset by the inappropriate expansion of the public sector, it is imperative that this boundary is maintained. Therefore, as it is not just Heron Island encroaching over the western limit, there must be enforcement against any boat encroaching over this limit, particularly any overlarge vessel or any boat forming a further row of moorings westwards .... '*

7.2 The original planning permission for the marina (ABG/742/34) showed all of the marina facilities contained within the application site. At its closest point, the application site is 43m away from the east side of South Quay promontory. The distance from the end of the southern arm of the marina pontoons to South Quay has been measured at 43.6m, which is 0.6m further away than the 43m shown on the approved plan. The distance to the nearest two finger pontoons on the ends of each of the three arms, to which boats are actually moored, is even further away. A dimensioned plan (not to scale) which shows the distance of each of the 6 finger moorings in question from the ends of their respective arms is attached as **Appendix 2**. The "moorings" remain well within the western limit, and taking this into account, it is estimated that any boat with a beam of less than that of Heron Island's alleged 3.8 metres will not encroach outside the marina application site by more than between 0.5m and 1.5m. A further letter of complaint received on the 30<sup>th</sup> October 2008 contests these figures and states:- *'It would actually be up to 3.4m'*. Heron Island on her current mooring (# 93) in fact actually extends 2metres beyond the marina application site, and if she was on mooring #33 or #36 she would actually extend 1.6 metres beyond the marina application site. The letter goes on *'Why propose further encroachment across the marina, when committee accepted that not enforcing against the one boat, Heron Island, would not set a precedent?'* and the writer is particularly disturbed by the recommendation *'That no action be taken against any boat, of less than 4 metres beam width, which may be moored directly to the western end of any of the three pontoon arms of the marina'* in report 107/08 which was withdrawn at the meeting on the 27<sup>th</sup> October 2008, believing that mooring directly on to the 2 metre wide ends of the three main arms was being advocated. For the avoidance of doubt, the recommendation has been amended to clarify this point.

7.3 It is therefore recommended: *That no action be taken against any boat, of less than 4 metres beam width, which may be moored directly to any of the six western most finger*

*pontoon moorings, two of which are located on the western end of each of the three main east west pontoon arms of the marina.*

## **8.0 Storage of a box trailer in the secure compound**

- 8.1 Committee may recall that in the 12<sup>th</sup> May report reference was made to a box trailer currently being used for storage purposes in the secure compound, it was resolved that:- *'That authority be delegated to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair and/or Vice Chair, to take enforcement action against Builders Ede Ltd. Abingdon Boat Marina, South Quay, Abingdon, to remove the box trailer, if considered necessary, Officers having first investigated the terms of the Section 106 Agreement'*.
- 8.2 The authorised use of the compound is for the secure parking of cars/vehicles and trailers only. Officers having checked the terms of the Section 106 Agreement are of the opinion that the parking and use of the box trailer within the compound is permitted. Paragraph 13, of The Fourth Schedule, of the Section 106 Agreement, headed *'Car Park'* states *'To procure that the trailer parking facilities provided in the car park are available at all times for the parking of trailers'*. Although it may have been anticipated that the trailers using the car park would only be boat trailers, this was not specified and the use of a small trailer for essential storage purposes is considered to come within the ambit of Paragraph 13.
- 8.3 The trailer is not considered to be overly large for the purpose it is used, it can easily be moved and relocated within the compound. However, Officers consider that it is probably in the least conspicuous position immediately behind the marina manager's office. Whilst it may be possible to provide a less obtrusive form of storage on the site, this would need to be the subject of a planning application. The marina manager has indicated that he is prepared to paint the trailer, which is currently white, any colour which it is agreed may help it blend in with its surroundings. The adjacent manager's office has been painted with a dark shade of green.
- 8.4 It is therefore recommended: *That no action be taken against the box trailer in question, other than requesting that it be painted a dark green colour.*

## **9.0 Permanent residential use of moorings**

- 9.1 Committee may recall that in the 12<sup>th</sup> May report reference was made to the fact that residents of the marina have made allegations that boat owners and other persons are "staying, sleeping and living on boats" and they believe that with the exception of the twenty "overnight moorings" this is not permitted and should be enforced against. It was reported that the Enforcement Officer had monitored the marina over a period of weeks and he had not witnessed anything which led him to believe that boats were being used for residential purposes. This monitoring has continued, and to date the Enforcement Officer has found no evidence that any particular person is 'living on any boat' or that any mooring has become a 'residential mooring', with the exception of the one permitted residential mooring. Therefore he has not had cause to, and has not attempted to, check the ownership details of any vehicles or boats observed at the marina, or intentionally photographed any individual.
- 9.2 There have been allegations that this "Monitoring" is in fact "Snooping" and "Covert Surveillance". For Member's information, the Enforcement Officer did not behave in

any way covertly during his investigation or in any way that was calculated to ensure that persons at the marina were unaware that he was making observations and taking photographs. He would usually wear either a fleece or waterproof jacket for site visits both of which carry the Council's name and logo on the chest. He always carries his Identification Card and Powers of Entry Authorisation with him and will always present it to anyone on introducing himself to them or when challenged/questioned by anyone. The photographs taken during each visit were taken openly and in full view of any one that may have been in the area at the time, and only to record what was observed and readily visible from a particular viewpoint with the naked eye.

- 9.3 The fact that no evidence has been found to date to support the allegations that persons are 'living on boats' or that any moorings have become 'residential' is not considered to be conclusive at this time. The summer months have proved to be particularly busy at the marina with much activity and comings and goings associated with people holidaying on their boats for vastly varying lengths of time and irregular periods. It is anticipated that when the 'seasonal' use of the boats significantly tails off during the winter months any 'residential' use will become far more obvious, as stated by the complainants after they had allegedly observed 'residential' activity on boats last winter.
- 9.4 Further investigations are needed to ensure the enforcement case is sound before any action is taken. Any recommendation for authorisation to take enforcement action could, if implemented, amount to an interference with the right of the individuals concerned to respect for their home under Article 8 of the European Convention on Human Rights. On this issue, the residential use of the moorings would be an inappropriate form of development in a sensitive location on the edge of the open countryside and the River Thames. Residential development in this location would be harmful to the character of the area and contrary to policy. Therefore, residential use of the moorings would be contrary to Policies G5 and R3 of the adopted Oxfordshire Structure Plan, Policies GS2 and L17 of the adopted Vale of White Horse Local Plan and the advice in PPS7. There does not appear to be any special circumstances that would outweigh these policy objections. Therefore, this interference is considered to be proportionate to the harm that would be caused if it is established that any unauthorised residential moorings exist and they were allowed to remain. Enforcement action in these circumstances would be justified and in the public interest.
- 9.5 It is recommended that Committee delegates authority to the Deputy Director (Planning and Community Strategy) in consultation with the Committee Chair/Vice Chair to decide whether enforcement action should be taken against the Marina owners and any individuals if it is established that they are using any boat(s) (apart from the Marina Manager's boat) as their sole or a principal place of residence, and it is considered expedient to do so. In a letter of complaint (referred to in 7.2 above) received on the 30th October 2008 this recommendation is challenged on the grounds:- *'that only a sole or principal place of residence amounts to residential use is utterly wrong. Any stay over two weeks should be regarded as being residential use of a boat which was/is equipped with all normal living facilities and would, therefore, be a residence'*.

RODGER HOOD  
DEPUTY DIRECTOR (Planning and Community Strategy)