

INLAND WATERWAYS



SQUATTED BOATYARD EVICTED

In *The Land* no. 1 we reported that boat dwellers in Jericho, Oxford had squatted the Castlemill Boatyard to prevent British Waterways selling it off for up-market housing development. The boatyard is the only local facility for maintenance and repair of Oxford's sizeable residential canal boat fleet.

At dawn on 31 May British Waterways (BW) swooped on the squatted Castlemill boatyard and evicted its occupants with a force of over 50 security men. Boats were craned off the yard back into the water, a ten foot high fence topped with razorwire erected around the site, and CCTV cameras installed. According to a security guard the operation costs £257,000, and since then costs are reported to have risen to £500,000. A spokesman for British Waterways explained that the expense was necessary because "we had intelligence that there were going to be 400 people occupying the yard." The "intelligence" turned out to be

the boatyard's website, www.portmeadow.org, which had put out an appeal for people to come and help defend the squat. British Waterways are now threatening to sue the squatters for damages. Meanwhile, Oxford City Council have issued an enforcement notice against the fence.

However, this is not the end of the road for those who want to save the boatyard because the site hasn't yet got planning permission for the luxury homes that British Waterways want to see built on it. At an appeal last year, an Inspector refused permission because British Waterways had not made "firm arrangements" for a replacement boatyard.

So far British Waterways have only managed to come up with vague arrangements on three possible sites, none of which have planning permission, all a fair distance from Castlemill, and all of which the boaters consider unsatisfactory.

THEY COVET THE WATERFRONT

British Waterways is supposed to manage Britain's canal network on behalf of the public, but instead they are turning it into their own private income stream, writes PAUL KINGSNORTH

The recent eviction of campaigners trying to save Oxford's last boatyard from predatory developers might seem an isolated, local story, of no great national significance. It is anything but. The battle for Castlemill Boatyard is no "mere" local issue. It is just one of many examples, all over the country, of local people, residential boaters and canal enthusiasts fighting back against the body that ought to be their greatest ally and supporter, but has become their enemy: British Waterways.

British Waterways (BW) was set up by government in the 1960s to manage the country's 2000-mile long canal network in the public interest. It is accountable to government and largely funded by the taxpayer. It is responsible for managing 3000 listed buildings, 42 scheduled ancient monuments, 5 world heritage sites, 8 historic battlefields, 600 miles of hedgerow and 1000 wildlife conservation sites. It is charged by the government with promoting and conserving this living history, increasing visitor numbers to the canals and increasing the amount of freight on the water.

At the same time, however, it is instructed to "seek opportunities for private sector partnerships" and "maximise, as far as practicable, revenue from its activities by charging a market rate for its services." It is between the lines of this consultant-speak that the problem can be found.

For BW is charged with acting like a commercial organization, despite being a public body. In principle, covering its costs and increasing its income streams is not a bad idea; in practice, it is turning into a disaster for Britain's canal network. Almost everywhere you turn, you can hear BW accused of putting its fundraising targets before its management of the canals, and its focus on property development before its duty to preserve the integrity of the waterways.

All over the country, BW are rapidly "redeveloping" canal and canalside infrastructure: selling off boatyards, building on wharves, transforming old warehouses into glitzy office blocks, even opening their own pubs and marinas. BW, with its tiers of management drawn from the private sector, its targets, its showy annual reports and its vast corporate HQ in Watford miles from the nearest canal, has become, in the eyes of many boaters and canal lovers, a semi-private company more interested in property values than the heritage and utility of the canals. Or, as the campaigners of Castlemill put it, more bluntly, "asset strippers."

The Oxford objectors are far from alone. Simon Robbins, of the National Association of Boat Owners, explains the problem succinctly: "BW is both landlord and tenant. They own a lot of canalside land and are developing it fast. But if the developer is also the body which is supposed to police development, the conflict of interest is clear."

Andy Jackson, founder of *Towpath Talk* magazine, is more ascerbic:

"BW is a navigation authority, yet very soon it may be a case of having lock keepers dressed as Mickey Mouse, saying 'have a nice day now' ... They have got into property development in a big way, selling off the family jewels, back-door privatisation: call it what you like. Property-wise they probably have a success story, but it is at a cost to the waterways. Years ago, BW would have about 30 people working on the canal bank and two in the office. These days it's two on the bank and 30 in the office. BW is run by property developers rather than lock-keepers, and it shows."

What BW calls its "property estate" is valued at £450m. As well as its own waterside developments, which it undertakes with private sector developers, BW is setting up commercial enterprises of its own to help it "maximise value" such as the development company, Isis, established in 2002. Another venture, BW Marinas, created in 2004, has angered private marina operators, some of who say it has been using BW's monopoly

Canaletto Reflections

I didn't realize how much the present-day life of the canal was under threat until recently, when the boatyard business came to a head. I've always enjoyed walking along the canal and looking at the activity – useful, human-scale, craft-based, untidy, interesting – in the boatyard with the campanile of St Barnabas watching over it, and the calm water in front.

And the other day I was in the Ashmolean Museum and I saw a lovely painting by Canaletto showing the Brenta canal near Venice. It's a scene of everyday activity: some elegantly dressed ladies and gentlemen out for a walk; one man fishing, another sitting on a pile of sacks of what might be corn or freshly ground flour: a lock; sunlight on the water; the spire of a church ... Anyway, as I looked at it I was struck by the odd fact that only a few minutes away from the place where the picture hung, I could see exactly the same sort of thing in real life.

And the painted one was catalogued and cherished and valued, and rightly so because it's so beautiful.

And the real one was going to be wiped out. All that useful activity had to be done away with, because it was not making sufficient profit.

Well we've gone wrong somehow in the way we live. Jericho is a place where it ought to be possible to maintain a working boatyard, to give a meaning and focus to the life of the canal. If it does go, something irreplaceable will go with it. It would be a thousand pities if the only way of experiencing the sort of ordinary, age-old, decent, priceless human activity that the boatyard represents were to look at it in a painting on a museum wall, or to read about it in a novel.

Philip Pullman, writing in *The Jericho Echo* 60, July 2006

power against them. Its Waterside Pubs Partnership aims to establish a chain of fifty waterside pubs by 2009 and its “Business Barges” are expected to roll out across the network in coming years.

Meanwhile it has increased its boat licence and mooring fees substantially, leading to claims that it is pricing the long-term and occasionally awkward residential boaters off the canals in favour of wealthy part-timers who are less likely to complain. Other critics complain that BW is putting gentrification of the network before freight carriage — even though canal-borne freight clearly has a role to play in the drive to reduce carbon emissions. Richard Barnett, a canal freight operator, comments:

“Just notice how everything is visionary and exciting. Whilst it is by statute a navigation authority British Waterways Board has abandoned large areas of its responsibility such as the Rivers Trent and Weaver. There is now no freight to Nottingham and whilst BW owns the wharf in that city at Meadow Lane and retains part of Trent Lane depot it will not allow any carrier to use either as it wishes to present these as redundant in the quest for yet more yuppy flats.”

The results of this focus are becoming clear all over the country. In London, £300 million has been spent redeveloping Paddington Basin, on the Regents Canal, into a glitzy office development, with floating “business barges” and a new glass HQ for BW’s London branch. Del Brenner, who runs the Regents Network, a group of London canal enthusiasts, was recently thrown off the land while trying to take photographs. It turns out, he says, that the land around the canal has been privatized. Office workers, not canal boaters, now take priority.

The same is true at other BW developments all over the country, each of which comes with its attendant local protest group, angered at the destruction of the character and facilities of their local waterways. At Wood Wharf in East London,



Castlemill eviction. A man in a dinghy tries to resist as one of the squatters’ boats is lowered into the water by BW’s contractors.

where a new development will include 3.5m square feet of commercial floor space, a hotel, 1,500 new homes, 35-storey office buildings and various ‘leisure facilities.’ At Granary Wharf in Leeds, where a ‘new public square’ translates as ‘more shops and offices.’ In Brentford, where the town’s last remaining boatyard is under threat of redevelopment, and where BW has refused to step in to support its owner. In Berkhamsted, Macclesfield, Loughborough, the Lee Valley ... everywhere BW goes, angry boaters and canal lovers follow.

The crux of the problem, as any boater will tell you, is conflict of interest. When a public body is charged with acting like a commercial company — and that public body owns swathes of “underused” land in some of the wealthiest parts of Britain — then it’s not hard to see where commercial logic will lead it.

Ultimately, BW’s ambitions can probably be best reined in by campaigns like that in Oxford, where its national reputation has taken a real knock — and by remembering the answer to the question that Del Brenner asks everyone who comes to talk to him about BW. “Who owns the canals?” he always asks. “The public. Not BW: you. Remember that.”

MOVE ALONG, GET ALONG

CHRIS COATES’ local authority treats boatdwellers like some other councils treat gypsies.

As a member of a local authority planning committee I have got used to considering applications from travellers for sites for both permanent residential and short stay caravan sites in the district and the associated political and human rights issues that they throw up. The area has large Irish and Romany traveller populations and as a general rule has a planning record in dealing with them that is better than a lot of local authorities. So when it came to dealing with other “travellers” was it naive of me to think that there would be a similar approach backed up by policies and local precedents?

I was recently contacted by a family who were being threatened with eviction from their residential moorings. They lived with

their eight year old on a narrowboat just outside town at some recently constructed moorings on a smallholding whose owner was hoping to earn some extra income from letting the moorings. The threat of eviction was coming from British Waterways because of a planning enforcement notice issued by the local council, despite the fact that BW had approved the moorings. I went down to visit them and a cautionary planning tale unfolded — the moorings were caught up in a wider planning enforcement against the landowner. It turned out that none of the developments (pig huts, a barn, a track and a mobile home) on the site had any planning permission, because the owner didn’t think he would get permission if he applied.

The family that contacted me were distressed in part by not being able to find out what was going on, or quite what their position was. So as their local councillor I set about asking the authorities a few questions on their behalf. As usual in tackling the authorities on what they consider to be fringe issues, there turned out to be more questions than answers with sometimes one answer contradicting another. British Waterways were adamant that without planning permission the moorings were illegal despite previously approving them – they then claimed that there were no residential moorings outside marinas on the Lancaster canal. This statement was undermined by the council's finance dept telling me that there were eight boats paying council tax and another thirteen under assessment.

I then tried the council's housing dept to find out what rights a family with an eight year old had when faced with eviction. My initial enquiry asking what the council's policy was on residential moorings met with a blank "what do you mean?" response. When I pointed out that surely they had some responsibilities for re-housing families with young children I got a load of waffle basically questioning whether a boat was a house and trying to say that they wouldn't be "homeless" because they could move their home somewhere else. Whilst there was some rudimentary logic to this argument, in practice it wasn't possible for them to move their boat far as the canal was closed for repairs in one direction and the connection to the wider canal network shut for the winter. On top of which there was BW's claim that there weren't any residential moorings on the canal anyway.

Oddly the most sympathetic response I got was from the planning enforcement officer who could see that the family were an innocent party caught up in a planning net not of their own making. When I put to her the question as to whether people living on boats would be covered by the same parts of the Human Rights Act as those that covered Gypsy Travellers she thought that that would be a "very interesting appeal hearing!"

A consultation carried out in November last year by the Office of the Deputy Prime Minister on Security of Tenure for Residential Boats estimated that there could be 20 to 45,000 people living on some 10 to 15,000 boats in the UK. The Association of Inland Navigation Authorities (AINA) estimates that there could be as few as 2,000 official recognised residential moorings on inland waterways in the United Kingdom, together with a number of marinas with residential moorings. Even if some of the people living on boats are in tidal waters, this leaves a huge shortfall in available moorings. The consultation was in response to a whole catalogue of discrimination against people living on boats including:

- the use of unfair terms in contracts;
- harassment to leave moorings & illegal eviction without due notice;
- prejudice against certain types of boat, so that only certain definitions of "residential boats" are allowed on moorings;
- recrimination against individual owners who raise concerns about moorings.

The summary of responses to the consultation was recently published in May 2006. Not surprisingly the majority of marina owners and mooring landlords favoured continuing with the current status quo, whilst residents overwhelmingly supported the introduction of legislation, pointing out that they were the only form of tenants not currently protected by legislation.

The government's response has been to recommend voluntary Best Practice guidelines and model agreements, adding that: "in the longer term we will only look at implementing legislation if deemed necessary by increasing levels of complaint and no redress." Until

any such legislation appears, residents of floating homes will have to continue to rely on the 1977 Protection from Eviction Act, which has so far been pretty ineffective in protecting boat owners — it can often only be used after an eviction has taken place and offers no redress or protection against unfair conditions in any agreement.

None of the above would have been any use to the local family faced with eviction that I was trying to help. Feeling as if I was by now clutching at straws I searched through the draft Local Development Framework for some mention of how the council saw the use of the canal and how residential moorings might fit into a wider planning picture. To my astonishment (though why I should continue to be surprised by these things I don't know) there were only two brief mentions of the canal in the whole document. One under cycling! — suggesting that the towpath was a potential cycle track — and another suggesting that a local marina might have a role in the regeneration of a local small market town. And that was it. That was all that planners thought about a major landscape feature with considerable potential for urban regeneration and tourism, as well as low cost housing. I hadn't really expected to find any proposals with regards to residential moorings, but I had hoped for a bit more than — "the canal might make a useful cycle track."

In order to redress this serious omission the Green Party group on Lancaster City Council has pointed out to the planners the need for policies that cover the tourism potential of the canal, canalside development, and residential moorings (see the suggested policy below). We also suggested that the section on low-impact development should include residential moorings.

Unfortunately the story of the family under threat of eviction from their mooring does not have a happy ending — eventually the landlord decided that the moorings were the least of his planning worries and decided to remove them himself. The family are now cruising looking for suitable long-term moorings. The whole episode highlights the lack of any serious support for what can quite clearly be a really affordable housing option for some and could easily be part of low impact development bringing in some additional income for those struggling to make smallholding viable.

Summary of Consultation on Security of Tenure for Residential Boats - available at : <http://www.odpm.gov.uk/index.asp?id=1500154>

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Proposed Residential Moorings Policy

Residential moorings and houseboats may contribute to the overall supply of housing in the district. There are some positive aspects of this form of housing, limited though it is:

- being provided for a limited period of time without necessarily causing a significant impact on the environment;
- overlooking and thus increasing the safety of otherwise potentially secluded areas;
- offering car-free housing.

POLICY HS.17 - RESIDENTIAL MOORINGS

Planning permission will be granted for further residential moorings on the canal if:

- a. they do not conflict with British Waterways or the Environment Agency's operational requirements;
- b. there is adequate servicing including water supply, electricity, and disposal facilities for sewage & rubbish;
- c. there is adequate access and car parking if required;
- d. there is adequate access for emergency services;
- e. there will be no significant effect on the amenity and conservation interest of the waterway.

The acceptability of proposals for such moorings will also depend on site circumstances and whether they comply with other policies in the Plan.

SLOW SWIMMING

Jean Perraton says that local authorities are being unduly fussy about people swimming in inland waters.

When in 2002 Buckinghamshire County Council decided to ban swimming in Black Park Lake, mothers from nearby Slough organised a wet T-shirt protest. This had always been their 'local beach'. The council, having been advised to provide lifeguards or ban swimming, decided on the cheaper course and, despite the protests, stuck to their decision. The more affluent and well-connected swimmers of Hampstead Heath had to resort to a legal battle in the High Court to enable them to swim in the mixed pond, at their own risk, on winter mornings.

Despite the proliferation of indoor heated leisure pools there are still those for whom the greater pleasure is a swim in natural waters, amid woods or meadows, mountains or moors. And, despite the ravages of industrial farming and changes to watercourses for land drainage and flood control, we still have many lovely rivers and lakes that would make good places to swim. Our rivers are cleaner than they have been for over a century, and in digging for sand and gravel we are constantly creating new lakes whose water quality is often better.

But the Environment Agency, the Health and Safety Executive (HSE) and the Royal Society for the Prevention of Accidents don't want us to swim in them. British Waterways bans swimming in all its canals, and few local authorities now allow swimming in country parks. Public authorities pay lip service to 'sustainability'; they encourage and sometimes subsidize many outdoor activities, but not the simple, and environmentally friendly activity of swimming.

Why? Partly it's an exaggerated view of the risks of swimming. It is often assumed that only swimmers drown, whereas it's more likely to be drunken youths larking around on the land. We lack good data to compare the risks of swimming



What do they worry about at safety points 1 to 8?

with other activities, but what we do have suggests that swimming in open waters (in the sea and inland) is much less risky than sub-aqua. Yet, sub-aqua is often allowed in lakes and reservoirs where swimming is not. And, despite frequent warnings about Weil's disease, the health risks of swimming in untreated water are low.

The problem, as so many others, lies in the ownership of land and water. We have a right to swim in most tidal waters but no general right to swim in non-tidal rivers and lakes. The owners of the bank own half the river-bed or lake-bed giving them rights to use the water including, usually, the exclusive right to fish. Fishing brings in money, swimming usually does not.

More significant, particularly for public authorities, is the fear that they may be sued under the Occupiers' Liability Acts if an accident occurs; or they may face criminal prosecution, under Section 3 of the Health and Safety at Work (HSAW) Act, if they ignore HSE advice.

However, a recent legal decision in the House of Lords makes it clear that the civil law does not require landowners to prohibit swimming where there are no unusual hazards, beyond the inherent danger of swimming. In Lord Hoffman's words: 'it will be extremely rare for an occupier of land to be under a duty to prevent people from



Swimmers at Symonds Yat on the river Wye.



Disused diving board at Coate water, once thronging with swimmers

taking risks which are inherent in activities they freely choose to undertake on the land.¹

There has been no such court decision restricting the operation of the HSAW Act relating to criminal prosecution, but comments in the High Court in relation to the Hampstead Club's application for judicial review, may have wider application. Mr Justice Stanley Burnton argued that it would be anomalous if the criminal law were to take away the individual liberty that the House of Lords thought it was establishing in civil law.² Thus, the HSE may be going too far in insisting that managers prohibit swimming in waters that present no unusual hazards.

This opens the way for a change in attitude towards swimming and now we have a pressure group — the River and Lakes Swimming Association — to push for it.³ The association is making waves, and we may now expect the HSE to revise its guidelines and the Environment Agency to modify its negative stance. In time, we can expect country park managers once again to allow swimming, where suitable, in waters they control.

But if we are to be able to swim in the wider countryside we need a legal right to do so. The CROW Act failed to create such a right within the new access areas. A simple amendment to this act could allow us to swim in waters within the access areas or canoe along rivers that run through them. This would extend our freedom to enjoy some of our finest countryside.

In much of lowland England, however, the timid and bureaucratic right-to-roam legislation brings little change. Here, we have fewer opportunities to enjoy the countryside close to our homes and fewer places to swim. In Scotland, thanks to the Land Reform Act of 2003, one can swim in almost any loch, river, reservoir or canal, and explore them in non-motorised boats. South of the border, we need to campaign for a more general right to roam through our countryside, and a right to enjoy, in low impact ways, the lakes and rivers within it. Such rights could exclude dangerous waters and sensitive wildlife habitats, and should, like the CROW Act, be matched by limitations on the landowners' liability for accidents. We could then paddle,



120 years ago: above, detail from *Les Grandes Baigneuses*, by Renoir; below, *The Water Rats*, photo by Frank Sutcliffe taken at Whitby. Both dated 1886. Was nude bathing more normal in Victorian times when people weren't as prude as they are now?



swim or canoe in most of the lakes and rivers of England and Wales, accepting the risks of doing so.

REFERENCES

1. Lord Hoffman in *Tomlinson v. Congleton Borough Council* [2003] 3WLR 705 HL(E) para.45
2. *Hampstead Heath Winter Swimming Club v. Corporation of London* [2005] EWHC 713 (Admin)
3. See www.river-swimming.co.uk

*This article is based on JEAN PERRATON's book **Swimming Against the Stream**, published in 2005 by Jon Carpenter. Photos on p. 30 from Jean Perraton.*