

Middle Level Bill

Against – on merits – Praying to be heard by Counsel, &c.

To the Honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled.

THE HUMBLE PETITION of MR CHRISTOPHER R TAYLOR.

SHEWETH as follows:-

1. A Bill (hereinafter referred to as “the Bill”) has been introduced and is now pending in your honourable House intituled “Middle Level Bill”.
2. The Bill is promoted by the Middle Level Commissioners (hereinafter referred to as “the Commissioners”). The Preamble to the Bill amongst other things recites that an Act of Parliament passed in 1810 established a body of Commissioners called the Middle Level Drainage Commissioners with power and jurisdiction to improve the drainage of the rivers, drains, lands and grounds, and that further Acts of Parliament amended the functions and reconstituted the body as Commissioners of drainage and navigation and transferred to them functions relating to navigation in the waterways of the Middle Level. The Preamble also claims that it is expedient to update the Commissioners' powers to regulate navigation; to confer further powers to regulate other activities affecting the use of the waterways for navigation; to confer powers to levy charges in respect of vessels using the waterways; to confer powers requiring the registration of vessels using the waterways; to revise provision in relation to the auditing of the Commissioners’ accounts; to enact other provisions and that the objects of this Act cannot be attained without the authority of Parliament.
3. Your Petitioner objects to the following Clauses:

Clause 2, which interprets the term “waterways”.

Clause 3, which would empower the Commissioners to fix and recover charges for the use of any waterway by any vessel; the provision of services and facilities in respect of the waterways and their banks; the registration of any vessel under navigation byelaws and to make the use of services and facilities subject to terms and conditions.

Clause 4, which would empower the Commissioners to carry out reciprocal enforcement activities with other navigation authorities against boat owners and to carry out reciprocal registration and charges for navigation with other navigation authorities.

Clauses 5 and 6, which would empower the Commissioners to close parts of the waterways or to close locks to navigation by vessels.

Clause 8, which would empower the Commissioners to immediately remove any vessel that is sunk, without notice to the owner; to remove any vessel that is stranded or abandoned with only 14 days' notice and any vessel that is moored without lawful authority with only 28 days' notice; to seize such boats within 6 weeks and to charge the owner for the cost of removal.

Clauses 9 and 10, which would empower the Commissioners to make certain byelaws including for controlling navigation; regulating the conduct and activities of persons using the waterways or banks; impose safety standards on vessels require insurance of vessels and require payment of charges for registration of vessels; making it a criminal offence not to register a vessel and empowering the Commissioners to refuse registration of a vessel.

Clause 11, which would empower the Commissioners to pass boat owners' personal information to third parties.

Clause 13, which would empower the Commissioners to subcontract enforcement of byelaws to third parties.

Clause 15, which would empower the Commissioners to serve enforcement notices by post.

4. Your Petitioner is a local member of the general public with a pleasure boat and the use of a private mooring on the Middle Level. Your Petitioner alleges that the proposals contained in the Bill will directly and specially affect the rights and interests of Mr Christopher R Taylor.

5. Your Petitioner and his rights and interests are injuriously affected by the Bill, to which your Petitioner objects for reasons amongst others, hereinafter appearing.

6. Your Petitioner objects to the Bill because it removes an historical Public Right of Navigation. When the Fens were drained in the 17th century to provide agricultural land, it destroyed a way of life for local people who relied on boats as their traditional form of transportation between the hundreds of small islands. The Earl of Bedford, who was responsible for the drainage project, therefore gave rights of access to private citizens to use their boats on the new canals and drains as long as they did not transport goods or merchandise. Essentially pleasure boats were allowed free of charge. These rights were conferred by the Nene Navigation Act 1684. Pleasure boats have had free navigational access to the Old River Nene, which forms a large navigational section of the Middle Level, from before 1215 protected by Magna Carta and many subsequent statutes and Royal Commissions. There are even Roman transcripts describing navigation along the Old River Nene as early as the 4th Century during the Roman occupation. The Old River Nene is a natural river and a Public Right of Navigation has existed since Time Immemorial and was first codified in the Magna Carta of 1215.

7. Your Petitioner also objects to Clause 2 because the interpretation of “waterways” as it seeks to extend the Commissioners' powers to all adjacent waters including private waters over which the Commissioners do not have jurisdiction.

8. Your Petitioner also objects to Clause 3(1) because the Commissioners already have the power to charge boats for the use of their waterways, except for pleasure boats. This clause would extinguish the ancient right to use boats not used for the carriage of goods without payment of toll or duty. I object to the erosion of my rights to freely access the Middle Level for non-commercial purposes. These rights were bequeathed to us, the people of Britain, hundreds of years ago and under no circumstances should they be extinguished.

In losing my right of navigation, I would also be prevented from freely using my pleasure boat, which prevents my peaceful enjoyment of my possessions. This is protected under Protocol 1 Art.1 of the European Convention on Human Rights.

9. Your Petitioner also objects to assertions that the navigation is subsidised by funds held for flood risk management. There are a mere 6-locks to maintain on the Middle Level, all of which are required to control the water levels with a secondary function to allow boats to navigate to the next water level. While it is true that the locks could be substituted by a weir, the Commissioners are required under statute to provide navigational access for all vessels including those carrying goods, water taxis etc.

and to the benefit of the Commissioners own maintenance vessels. One of the six locks is needed to prevent tidal seawater from flooding the land and another for sluicing to allow water in for crop irrigation. DEFRA funds the area with taxpayers' money as part of the UK's flood strategy, so maintenance of the small number of locks, that are also required as part of the UK flood defence, is the correct use of DEFRA funding.

The drains are also funded by land owners who collectively pay over £3 million each year to have their land drained, because without drainage, their land would be swamp and their crops destroyed. This is some of the most productive farmland in the UK. No other waterway in the UK has this kind of funding, but equally the Middle Level is not a navigation in the sense that other waterways are. It is a network of navigable drains. There are no boaters' facilities, no moorings and no towpaths for the Commissioners to fund, so apart from the locks, which also provide a dual role, the Commissioners' navigation duties are extremely limited.

10. Your Petitioner also objects to Clause 4(1) because it will put boaters at risk of draconian or unlawful enforcement action carried out by another navigation authority being passed on to the Commissioners to enforce, amounting to harassment and persecution of the boater and bringing the Commissioners into disrepute. It would also require the sharing of personal data to third party authorities and adds greater risk to data protection that is outside the control of the Commissioners.

11. Your Petitioner also objects to Clause 4(2) because the Commissioners have no control over other navigation authorities' registration and charging arrangements and are not in a position to provide this in return for the proposed charges.

12. Your Petitioner also objects to Clauses 5 and 6 because they would put my rights of navigation during certain times of the year at risk. It would be unfair for the Commissioners to charge boat owners to use the waterways and then close the waterways for the benefit of other, non navigational activities. There is no provision for any moorings to be erected to enable boaters to tie up and wait for the navigation to be reopened. Also 8 half hour periods in any 24-hour period equates to 4-hours a day and this could make navigation challenging when attempting to make allotted lock times at Salters Lode or Stanground Lock.

The use of local newspapers as the primary means of notifying the public of navigation closures is unacceptable in the 21st century and beyond.

13. Your Petitioner objects to Clause 8 because the Commissioners already have powers to remove and seize sunken boats and to recover the costs of this; see Article 17 of the Middle Level Navigation Byelaws 1875 and *Middle Level Commissioners v Marnier* [2006] EWCA Civ 931.

The ability to make new bylaws would be an open door to allow the Commissioners the freedom to make laws on a wide range of matters as they see fit, without community consensus, review or redress mechanisms.

'Lawful Authority' would provide the Commissioners with authority to remove any boat that has not complied with new registration and licensing requirements or in fact any boat they are not happy with and to access private marinas to remove such vessels. The owner of such vessel may be out of the country, in hospital or worse and without their knowledge, their buoyant vessel, considered abandoned or there without lawful authority, is removed without their or their family's consent. Furthermore having the ability to stipulate the engine size, power, type or fuel used could again force boats off the system that do not comply.

Fixed and enforced mooring time limits do not reflect the reality of navigating all year round.

Circumstances such as flood; high winds; mechanical breakdown; illness; ongoing medical treatment; disability; pregnancy; family emergency and caring for vulnerable or elderly family members mean that boaters may need to stay longer than a given time limit. They need to be able to do so without being penalised for circumstances that are beyond their control or no fault of their own. The proposed byelaws would be repugnant to the general law as they would prevent vessels mooring for temporary

periods in the course of navigation, “temporary” being dependent on factors such as the circumstances of the boat, river conditions and weather.

14. Your Petitioner also objects to Clauses 9 & 10 because the Commissioners already have byelaw making powers under the Middle Level Act 1874 and these powers are adequate. There are ongoing disputes with land owners and owners of residential properties with moorings as to whether the land and moorings belong to the Commissioners or not. This could give the Commissioners authority to close moorings that have existed for decades, effecting property owners with moorings, the value/ resale of their land and properties.

Access to a person’s boat/ home in the case of boat dwellers by the Commissioners to facilitate an inspection is excessive and could contravene the Forcible Entry Act of 1381. Presenting a Boat Safety Certificate to the Salters Lode & Stanground lock keepers should be sufficient as the only two entry and exit points.

In making the person in charge of the vessel, responsible for the actions of his passengers and be required to provide details of those passengers on request, is contrary to the Right of Silence under Article 6 of the European Convention on Human Rights and the Human Rights Act 1998.

It should not be the defence of a person charged of an offence to prove anything. Enshrined in law the Human Rights Act 1998 places the burden of proof on those that are alleging a crime. ‘Innocent until proven guilty.’

The proposed byelaws would also criminalise boat owners who through no fault of their own could not afford to pay for registration.

Boaters would have the risk of being refused a licence and having to take the Commissioners to a Magistrates Court to appeal their decision, which would be time-consuming, stressful and incur court costs. This could open the door to victimisation and clearance of the waterways of any boats that the Commissioners do not like.

15. Your Petitioner also objects to Clause 11 because it would violate the rights of individuals to privacy under the Data Protection Act and under Article 8 of the European Convention on Human Rights.

16. Your Petitioner also objects to Clause 13 because subcontracting enforcement of byelaws to third parties would open the door to harassment and intimidation by third party security and enforcement companies.

17. Your Petitioner also objects to Clause 15 because serving enforcement notices by post would disadvantage boaters who do not enjoy a residential postal service, to the extent that their rights under Article 6 of the European Convention on Human Rights would be violated.

18. Your Petitioner also objects because the Bill contains no obligations under which the Commissioners would be duty bound to provide an adequate depth of water for navigation; dredging; maintenance or any toilet/ shower facilities, refuse or sewage disposal facilities, moorings or towpaths in return for navigation charges, as are normally provided on other waterways where fees are payable. Essentially, boaters would notice nothing positive, but would be subject to legislation that would: force them to pay a fee to register; pay annual licence fees; be a criminal offence to use the navigation without a licence; be forced to display a registration number; restrict access during certain times of the year; have the risk of being refused a licence and appealing the decision in a Magistrates Court. There are no advantages for boaters in return. This will destroy the Middle Level navigation and the local boating community.

19. Your Petitioner also objects because the Commissioners claim that it is necessary to update existing legal framework which governs the Commissioners’ navigation function, as it is considered to be out of date and does not align with modern requirements or the statutory framework applicable to

other navigation authorities. This suggests that there is another agenda in the background and the main purpose of this Bill to enable other authorities to take control of the Middle Level navigation, collect fees and without any obligation to provide facilities and services.

The River Amstel, which flows through Amsterdam, is arguably the most modern and successful waterway in Europe. Managed by the Dutch authority Waternet, there are no requirements for pleasure boats to pay licence fees to use the waterways, only mooring fees. This attracts pleasure boats to use the waterways, increases tourism and adds to the vibrancy of the region.

The proposed Bill would introduce licence fees, having the opposite effect and driving boaters away.

20. Your Petitioner also objects because the Commissioners claim to have consulted all interested parties and that the substantial majority were in favour of the proposed changes. First of all the Consultation also took place during the month of the UK referendum, arguably the largest constitutional event since 1973, so public focus was preoccupied with the Brexit vote.

The Commissioners made no attempt to notify hundreds of homeowners with moorings, who are directly affected and had they done so, I would have certainly learned of it, rather than through the grape vine.

Apart from a small ad in a local paper, they did little to notify boaters, which could have been done easily through local boating clubs. The March Cruising Club, a stones throw from the Commissioners offices and one of the largest boating clubs on the Middle Level was not made aware of the consultation.

I attended the recent club AGM where the members were asked to vote on the proposed Bill. There was almost unanimous opposition to it.

Aware of this lack of general awareness back in July 2016, I decided to create an online petition. I produced 500 leaflets and handed them out to boaters on the Middle Level. Before this petition was submitted to the House of Commons on the 25th of January 2017, the online petition had acquired 487 signatures from people objecting to the losing their right of navigation.

To suggest that the number of signatures may be small, I would like to point out that most of the boats on the Middle Level are moored up in the three marinas. The three marinas hold a total of 360 boats so these 487 objecting signatures represent a significant percentage of the boating community.

21. There are other clauses and provisions of the Bill which, if passed into law as they now stand will prejudicially affect your Petitioner and his rights and interests and for which no adequate provision is made to protect your Petitioners.

22. The Preamble to the Bill, in so far as it relates to the matters aforesaid, is untrue and incapable of proof.

YOUR PETITIONERS therefore humbly pray your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by their Counsel, Agents and witnesses in support of the allegations of this Petition against the Preamble and against such of the clauses and provisions of the Bill as effect the property, rights and interests of your Petitioners and in support of such other clauses and provisions as may be necessary or expedient for their protection, or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND your Petitioners will ever pray, &c.

Signed _____ MR CHRISTOPHER R TAYLOR