

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 Derek Paice.

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 Petitioners object to the following Clauses:

Clause 2, which defines “the 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.

Clause 5, which would empower the Commissioners to close parts of the waterways for works on, under, over or adjoining the waterway or to facilitate the holding of functions and to close Well Creek for any period between 1st December and 1st March for the purpose of allowing ice to form

and remain for the purposes of facilitating ice-skating.

Clause 6 which would empower the Commissioners to close locks to navigation by vessels.

Clause 7 which would require the owner to carry out specified works on structures deemed to be in a state of disrepair.

Clause 8, which would empower the Commissioners to remove immediately and without notice to the owner, any vessel that is sunk; 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. The clause further entitles the Commissioners to take possession of furniture, tackle, apparel, goods, chattels and effects after six weeks.

Clause 9, which would empower the Commissioners to create byelaws including for controlling navigation; regulating the conduct and activities of persons using the waterways or banks; regulating moorings; prescribing standards for the construction of, and equipment and conditions, of vessels, appliances and fittings and authorising the Commissioners to inspect vessels; requiring vessels to be made open to inspection by the Commissioners; providing for the Commissioners to recover lost items and recover expenses of so doing to the owner; requiring the reporting of names and addresses of all on board to the Commissioners; providing for the contravention of the byelaws to be punishable offences; confirming the Commissioners' status as a local authority.

Clause 10, which would impose a requirement for registration; for specified standards on vessel construction; require payment of charges for registration of vessels; making it a criminal offence not to register a vessel; empowering the Commissioners to request unspecified information and to refuse registration of a vessel; allowing no appeal or complaint against any requirement to meet required standards or specifications.

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

Clause 12, which would empower the Commissioners to develop the waterways for recreation and build moorings.

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 lives on a narrowboat (which, since it is not a "commercial boat", most fits the description of "pleasure boat" in the Nene Navigation Act 1684) on the Middle Level and this has been his home since 2011. This was the only available and affordable option after losing his home of eight years when his father died. Your Petitioner alleges that the proposals contained in the Bill will directly and specially affect his rights and interests, including allowing the commissioners new powers to seize his home and sell it on for less than its value, effectively making him homeless, destitute and an additional cost to the state.

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 because the Bill contains no protection for the homes of people who, like him, live on their boats. The Bill brings uncertainty to all boaters whether they are moored in one of the three main marinas, on a private mooring or live as continuous cruisers. The legislation and enabled byelaws could be used to evict boat dwellers; carry out social clearance and discriminatory exclusion of boat dwellers from the Middle Level. The residential use by private citizens of vessels that do not have a permanent mooring is not prohibited anywhere in law and is therefore permitted. 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; maintenance or, indeed, any facilities to boaters and therefore for whom there would be no discernible advantages. Boaters would notice little change except to 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 with no reimbursement for loss of navigation; have the risk of being refused a licence and having to appeal the decision in a Magistrates Court. This will have a detrimental effect on the Middle Level navigation and the boating community. Essentially the Bill introduces new ways to make criminals of hitherto law-abiding people. The Middle Level Commissioners are seeking the status of a local authority, while being unprepared to take on the responsibilities, which could well include the rehousing of anyone whose home and property they confiscate after the introduction of their new byelaws and any other byelaws they decide to introduce now or in the future, as provided for in the Bill.

7. So-called "pleasure boats" (i.e. boats not used for commercial purposes) have had free navigational access to the Old River Nene and its extension into Well Creek for many years, a large part of it for many centuries. The Old River Nene forms a substantial navigational length of the Middle Level, and parts of it have been known to be in use from before 1215. It has been protected by Magna Carta and many subsequent statutes and Royal Commissions. There are transcripts describing navigation along the Old River Nene as early as the 4th Century during the Roman occupation. Although the Old River Nene has changed its course over the centuries it is a natural river and a Public Right of Navigation has existed since time immemorial. During the twentieth century parts of the river became unnavigable, but many of those parts have been brought back into full use.

8. Your Petitioner objects to Clause 2 because the interpretation of "waterway" seeks to extend the Commissioners' powers to all adjacent waters including private waters over which the Commissioners do not have jurisdiction. Also the waterways defined in Schedule 1, while forming part of the Middle Level drainage system, are not all navigable.

9. Your Petitioner 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", as explained in Paragraph

7 above). This clause would extinguish the ancient right to use boats (except for those used for the carriage of goods) without payment of toll or duty. Your petitioner objects to the erosion of rights to access freely the Middle Level for non-commercial purposes. These rights were bestowed upon the people hundreds of years ago and they should not be removed. Because use of the Middle Level is currently free, they are home to a number of boat dwellers on low incomes, including your Petitioner, who cannot afford to live in more standard accommodation. The introduction of fees on waterways where registration or licences have hitherto not been required adds an as yet unquantified burden on people, which would be open to future increases once such a principle had been established. Many people on the Middle Level have managed to reduce their outgoings, but even so, many are still only just managing. That some people would be forced out of their homes due to an inability to pay such arbitrarily introduced fees is wrong and will have a negative impact on the wider community. People living independent lives, and within their available means, should not be forced to seek homes on land in more expensive rented accommodation where they would have to be subsidised through benefits. These increased navigation costs would inevitably lead to a greater demand on social housing and the tax payer. The Commissioners have not made a case for increasing the costs of living on the Middle Level when that increase will result in increased costs elsewhere in the system - for example, in housing and social welfare.

10. Your Petitioner objects to Clause 3(1)(b) on the grounds that the services and facilities that are currently provided by the Commissioners are also a function of their responsibilities to maintain safe and adequate flood defence and drainage in the Fens. Landowners and householders pay a rate to the Commissioners for drainage. Your Petitioner was once the owner of a semi-detached house built by Marshland Rural District Council (now part of the Borough Council of King's Lynn and West Norfolk) during the 1940s and paid an annual rate for drainage services to the Commissioners. This was on account of a narrow, shallow and mainly unattended ditch (known locally as a "dyke") at the end of his garden. This rate was later incorporated into council tax payments and therefore became less transparent than an annual bill direct from the Commissioners themselves. These rates received from householders living in Norfolk, Cambridgeshire, Huntingdon and Peterborough are not widely appreciated as a source of income for the Commissioners, but are substantial. Part of keeping the drainage system operational involves the removal of silt, a result of run-off as the land is drained and of weather, including the topsoil erosion known in severe manifestation as a "fen blow". It is arguable that navigation and the passage of boats keeps at least a central channel open for water flowing through the system and obviates the requirement for more frequent dredging. Boaters are encouraged to use a middle channel anyway when navigating in order to avoid undermining the banks. Encouraging boaters to use the waterways offsets and reduces the need for expensive, periodic dredging operations. The Bill would have the opposite effect of discouraging waterways traffic. The drains were and are still funded by land owners who collectively pay a total of over £3 million each year to have their land drained. Without drainage their land would return to marsh and fen and their crops would be destroyed. This is some of the most productive farmland in the UK. Some of the locks are needed to prevent tidal seawater from flooding the land. DEFRA also fund the area with taxpayers' money as part of the UK's flood strategy. 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 drains, some of which are navigable.

11. Your Petitioner also objects to Clause 3(3) because "the use of the services and facilities" is not defined. Only five of the locks and sluices, on waterways large enough to allow the passage of

vessels, are in use (Horseway and Welches Dam Locks are mostly or permanently out of action); there are no boaters' facilities, no moorings and no towpaths for the Commissioners to maintain, so apart from the locks, weed-cutting of aquatic flora and, perhaps, more frequent dredging (all of which serve to facilitate existing drainage authority functions), the Commissioners' role strictly with regards to navigation is very limited. The Commissioners are not undertaking to provide any extra services, toilet or shower facilities, refuse or sewage disposal facilities, moorings, towpaths, guaranteed navigable depth of water or dredging in return for navigation charges, as are normally provided on waterways where fees are payable.

12. There is no mechanism to limit the Commissioners' ability to impose terms and conditions. This will give the Commissioners power to do anything they like, which would be an open door to the harassment and persecution of boat dwellers, as we have seen on other navigation authorities' waterways. In any event, there are no services and facilities provided and maintained by the Commissioners apart from navigational structures and there are already byelaws regulating the use of these. All boaters, but especially boat dwellers, will be severely disadvantaged by the imposition of terms and conditions. At present, the Middle Level is a waterway system where boaters are not required to agree to licensing terms and conditions in return for the freedom to navigate. Boaters will lose a respite and safe haven where they can go if they are unable, through no fault of their own, to comply with the terms and conditions imposed by other navigation authorities, such as the arbitrary distance requirements of the Canal & River Trust that have received so much recent publicity.

13. Your Petitioner 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 further compound the loss of a safe haven where boaters, especially boat dwellers, can go if they are unable, through no fault of their own, to comply with the terms and conditions imposed by other navigation authorities.

14. Your Petitioner 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.

15. Your Petitioner also objects to Clauses 5 and 6 because they would put rights of navigation during certain times of the year at risk. It is unreasonable for the Commissioners to charge boat owners to use the waterways and then close the waterways for the benefit of other, non fee paying, members of the public. There is no provision for waiting areas or the waiver of mooring charges during closures.

16. Your petitioner objects to Clause 7 because existing byelaws cover the construction and use of structures adjacent to or close to waterways. Some longstanding and functional structures on private land that do not impede navigation may nevertheless be vulnerable to action where they are deemed not to conform to what could be, essentially, aesthetic requirements. Having to bring riverside structures into line with arbitrary specifications is likely to be punitively expensive. Having to serve a counter-notice in order to contest any notice served by the Commissioners under Clause 7 is also likely to be stressful, time-consuming and expensive. The Middle Level Commissioners already have authority to require landowners and householders to remove structures that compromise

navigational safety and the functionality of the waterways.

17. 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 Marner* [2006] EWCA Civ 931. There are ongoing and unresolved 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 evict boats from moorings that have existed for decades. There is no definition of “without lawful authority”. As it stands, this clause would allow the Commissioners to prohibit the residential use of vessels. This would violate the rights of boat dwellers under Articles 6 and 8 of the European Convention on Human Rights to due process and respect for their homes. Boats that are people's homes could be summarily removed without opportunity for the boat dweller to defend themselves. There is no requirement for the Commissioners to ascertain whether or not a vessel is someone's home. There are no criteria for the reasonableness of removal and seizure of a vessel or for refusal or revocation of registration.

18. Your Petitioner objects to Clause 9 because the Commissioners already have adequate byelaw-making powers under the Middle Level Act 1874. Under Clause 9 the Commissioners are also seeking the authority to examine people's homes, which in most cases amounts to an unwarranted, unwanted and unnecessary invasion of personal space. There are already statutory bodies, including the police, with the authority to enter people's homes under appropriate circumstances. Requiring boaters to surrender the right to privacy as a condition of being granted a license to navigate is unreasonable and grossly intrusive.

19. In Clause 9 the byelaws are expressed in such a way that bad luck becomes a punishable offence. Where an incident occurs that compromises a vessel's integrity or ability to move, the vast majority of boaters are only too keen to get any necessary repairs completed so they can restore their homes and/or be on their way. A boat is a huge investment, especially when it is someone's home, where the investment extends beyond merely the financial cost. The waterways do not have the sophisticated repair and recovery infrastructure available to road users or even to home owners and repairs take time, often being more expensive than those required for homes and cars. While some boat owners may be more resourceful than many home-owners or road vehicle drivers and, given sufficient time, can deal with many problems themselves the Commissioners are seeking the authority to add to the misfortune of a breakdown by harassing boaters, impounding their vessels and charging recovery costs at premium rates when boaters may only need more time to deal with their problems. Often, sourcing parts for boat engines is more complicated and expensive than for road vehicle users. Boaters can experience a range of break downs not suffered by either road vehicles or in homes such as, for example, where a frozen pipe in a domestic heating system can also immobilise the boat through compromising the engine's cooling system.

20. Being required to provide the Commissioners with names and addresses of passengers is not only an imposition, but often may not be possible. The right of the Commissioners to be able to demand these details is also questionable. While the owner will undoubtedly take all steps to ensure the safety of anyone else on board there will be circumstances where the owner/responsible person may not know or need to know the current address of other people on his/her boat. Road vehicle drivers are not expected to provide this information to the DVLA and householders don't have to record the names and addresses of every visitor because local authorities do not request this

information. Once again it looks like the Commissioners are attempting to assume police powers. One assumes local police forces are not seeking to outsource their authority to local drainage boards.

21. Your Petitioner objects to Clause 10(3)(b) because the proposed byelaws would criminalise boat dwellers who, through no fault of their own, may not be able 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 further costs. This could open the door to victimisation and clearance of the waterways of any boats that the Commissioners do not like, especially boat-dwellers. Your Petitioner also objects to Clause 10(3)(g) requiring a vessel to meet unspecified standards. Any such standards are already likely to be covered by keeping Boat Safety Scheme certification up to date, which is a requirement of boat insurance policies. This is sufficient encouragement to comply with this requirement. Failure to comply with 10(3)(g) would again result in prosecution and removal of a person's home. If the Commissioners revoke or refuse to grant a license, where is a boat-dweller supposed to go?

22. The proposed draft byelaws could be used to exclude boat dwellers from the Middle Level. The definition of "houseboat" and the use of the term appears to seek to prevent and criminalise the residential use of vessels that are also used for navigation or as a means of transport. Many vessels are used both as a home and as a means of transport or for navigation. The Commissioners have not provided any definition of "used as a means of transport". The draft byelaws would lead to an arbitrary and draconian interpretation of whether a vessel is "used as a means of transport" in a way that would violate the rights of boat dwellers under Article 8 of the European Convention on Human Rights.

23. 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 liveaboard 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 are no fault of their own. The definition and use of the term "emergency" is too narrow. In many cases it is not possible to predict accurately the duration of the "emergency". 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.

24. There is no safeguard protecting the use of a vessel as a home or against any arbitrary mooring or movement restrictions. There is no safeguard against the victimisation and bullying of boat dwellers by navigation authority staff, or their agents, which regrettably is a regular occurrence on the waterways and there is no definition of "the exercise of any statutory function of the Commissioners in respect of Navigation".

25. Your Petitioner 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.

26. Your Petitioner objects to Clause 12 because it would interfere with the public right of navigation and would open the door to clearances of boat dwellers in favour of recreational and

leisure use, violating their Article 8 rights. The predominant boating use of the UK's inland waterways at the present time is not recreation: statistics collected in 2016 by the UK's largest inland navigation authority (Canal & River Trust) show that around 50% of boats are used as permanent or temporary homes. This Clause must include provision for developing the waterways for the use by vessels that are used as primary residences, whether or not these vessels have permanent moorings, are also used for navigation or also used as a means of transport.

27. Your Petitioner objects to Clause 13 because subcontracting enforcement of byelaws to third parties would open the door to harassment and intimidation of boat dwellers by third party security and enforcement companies. When payment for these third party services is "by results" standards of behaviour and broader social considerations inevitably suffer.

28. Your Petitioner object to Clause 15 because serving enforcement notices by post would disadvantage boat dwellers without permanent moorings, 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.

29. Your Petitioner objects because the Bill contains no provisions for any moorings to have a minimum stay time of 14 days and no proposal for widespread provision of 14-day moorings. At present the maximum stay period on any public mooring in the Middle Level is 36-hours. The Commissioners appear to be seeking something like parity with other waterways, but only in terms of income for them and not in terms of the services they are providing.

30. Your Petitioner objects because there is no valid reason why the statutory framework of the Middle Level must align with that of other navigation authorities' waterways when an argument could be made for the other waterways to align their charges with the Middle Level.

31. 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. To your petitioner's knowledge the Commissioners have not published sufficient evidence to back this claim. Your petitioner was not notified of either the initial consultation or this Bill. The Middle Level Waterways Users Committee does not have a member representing your Petitioner's interests. He only became aware that such a body even existed whilst preparing this petition. Among the Commissioners and representatives from statutory bodies on the Users' Committee there are (according to minutes of a meeting on October 2016), however, three angling clubs and one boaters' club that has two representatives. Unfortunately the boater's club does not appear to represent the interests of boaters outside of their group and the group does not reach out to unaffiliated boaters. Your Petitioner has also spoken to landowners and others working on the river who have not known that this Bill was being presented.

32. 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, interests and potentially his home and for which no adequate provision is made to protect your Petitioner.

33. 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.