

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 JOHN HODGES.

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 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; imposing safety standards on vessels; requiring insurance of vessels and requiring 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.

4. Your Petitioner is a member of the public, homeowner with mooring on the banks of the Middle Level and boat owner. Your Petitioner alleges that the proposals contained in the Bill will directly and specially affect the rights, interests and property of Mr John Hodges.

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

6. Your Petitioner objects 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 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. Because use of the Middle Level is currently free, it offers people like me the ability to enjoy boating in my retirement on low retirement incomes, a lifelong hobby and pastime. Should registration and licence fees be levied, I would be forced to sell my boat and give up my lifelong passion for boating, due to an inability to pay.

8. The drains were and are still funded by land owners, such as myself, who collectively pay over £3 million each year to have their land drained because without drainage, their land would be swamp and their property/ crops destroyed. This area has some of the most productive farmland in the UK. Some of the six 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 navigable drains. There are only six locks to maintain, no boaters' facilities, no moorings and no towpaths for the Commissioners to fund, so apart from the locks and some dredging, the Commissioners' navigation role 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. If this Bill is passed, I would be required to pay for drainage and to navigate on the Middle Level.

9. 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.

10. 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 fee paying, members of the public. There is no provision for waiting areas or the waiver of mooring charges during closures. Examples of closure might be canoeing competitions, raft races etc. which could prevent me from navigating on water I have paid to use.

11. Your Petitioner also 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 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.

12. Your Petitioner also objects to Clauses 9 and 10 because the Commissioners already have byelaw making powers under the Middle Level Act 1874 and these powers are adequate. The proposed byelaws would criminalise boat dwellers 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.

13. 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 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.

15. 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.

16. 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 facilities to boaters. 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 boating community.

17. 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, but I was not consulted as a property owner with a river mooring, known to the local council and the Commissioners. It is my understanding that the commissioners made no attempt to notify homeowners with moorings who after all are interested parties.

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

19. 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.