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**REVOCATION OF ELY MOORING BYELAWS**

Committee: Full Council

Date: 16 October 2014

Author: Senior Legal Assistant and Partnerships Officer

[P99]

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**1.0 ISSUE**

- 1.1 The revocation of Ely Mooring Byelaws sealed by the District Council on the 27 April 2001 and 5 March 2014.

**2.0 RECOMMENDATION(S)**

- 2.1 That approval be given to the revocation of Ely Mooring Byelaws sealed by the District Council on the 27 April 2001 and 5 March 2014.

**3.0 BACKGROUND/OPTIONS**

- 3.1 The current Mooring Byelaw that was sealed by the District Council on the 27 April 2001 was confirmed by the Secretary of State on the 24 July 2001, and came into operation on the 23 August 2001.
- 3.2 In 2009 the Leader of the Council requested that Ely riverside was investigated to try and organise a robust and co-ordinated approach for enforcement of the visitor (48 hour) moorings along Ely riverside as there were areas of unknown ownership that the current Mooring Byelaw did not apply to, and this meant that there was an inconsistent enforcement approach along Ely Riverside.
- 3.3 With this objective, Community and Leisure Services embarked upon a project to investigate ownership of the land which ran the length of Ely riverside from Ely High Bridge to the Railway Bridge at Willow Walk, to identify the exact areas in unknown ownership, with a view to seeking adverse possession for the land and including them within its Mooring Byelaw.
- 3.4 On the 16 June 2011, the Community and Environment Sub-Committee Members :-
- 3.4.1 Approved a consultation with interested residents, businesses and stakeholders regarding the land which was in unknown ownership.
- 3.4.2 Authorised Legal Services to submit an application for adverse possession for the land in unknown ownership to the Land Registry following the consultation, so that ownership could be registered to the District Council.

- 3.4.3 Authorised Legal Services to bring a report to Full Council to amend the Mooring Byelaw to include the new areas of land which had been taken into the District Council's ownership.
- 3.5 A report was taken on the 17 July 2012 to the Community and Environment Committee to:
- 3.5.1 Note the successful adverse possession applications of the slipway and the cutter corner on the 13 June 2012.
- 3.5.2 Approve the consultation with local residents and interested bodies including the Environment Agency, on the amendments to the Mooring Byelaw to include the extent to which the Mooring Byelaw would apply to the slipway and cutter corner.
- 3.6 A report was taken to the Community and Environment Committee on the 21 November 2012 to note the results of the consultation on the proposed amendments to the extent of land to which the Mooring Byelaw would apply, and it was recommended to Full Council to make the proposed amendments subject to obtaining provisional approval of the Mooring Byelaw from the Secretary of State.
- 3.7 The Mooring Byelaw was submitted to the Secretary of State for provisional approval in December 2012. Whilst the application was with the Secretary of State for consideration, an application was made by a member of the public to record the Slipway at Ely waterside as highway. The County Council considered the application and on the evidence provided and found the land to be highway in March 2013. The County Council then stated that they had an issue with the Mooring Byelaw because of the reference within the Mooring Byelaw to the Slipway which conflicted with their statutory duties under s130 of the Highways Act.
- 3.8 Advice was taken from Counsel on the issue raised by the County Council. Counsel advised that paragraph 6 which referred to the Slipway was unlawful and should not be enforced and that the draft byelaw should be amended to delete reference to Paragraph 6.
- 3.9 This advice was followed and the application for provisional approval made to the Secretary of State was withdrawn under action taken on the grounds of urgency on 23<sup>rd</sup> May 2013. A further consultation with neighbouring residents, businesses and stakeholders was undertaken on the Mooring Byelaw which had had paragraph 6 and the plan referring to the Slipway removed.
- 3.10 It was agreed by the Community and Environment Committee on the 17 July 2013 to:-
- 3.10.1 Note the results of the consultation on the revisions to the Mooring Byelaw.

- 3.10.2 Instruct Officers to submit the Mooring Byelaw to the Secretary of State for provisional approval.
- 3.10.3 Recommend to Full Council to make the proposed amendments to the Mooring Byelaw (subject to the provisional approval from the Secretary of State).
- 3.11 An application for the provisional approval of the Mooring Byelaw was sent to the Secretary of State in July 2013 and, following consideration of the application and discussion with the District Council, provisional approval was granted by the Secretary of State on the 27 January 2014.
- 3.12 Following the granting of provisional approval by the Secretary of State, Full Council approved the revised Mooring Byelaw on the 27 February 2014, and the formal byelaw documentation was formally signed by the Chief Executive on the 5 March 2014.
- 3.13 A statutory process contained within s236 Local Government Act 1972, requires that one month prior to an application for confirmation from the Secretary of State, that a notice is published in a newspaper advertising the Council's intention to apply for confirmation from the Secretary of State. Representations during this statutory consultation period are sent directly to the Secretary of State, and considered by them before confirmation will be granted.
- 3.14 In accordance with s236 Local Government Act 1972, the District Council published its intention to seek confirmation of the revised Mooring Byelaw in March 2014.
- 3.15 The District Council was not notified that any representations had been received until it contacted the Secretary of State on the 8 April 2014 (following the month consultation period). The Secretary of State then informed the Council that a representation had been received regarding the legality of the existing and proposed Mooring Byelaw.
- 3.16 The representation made to the Secretary of State stated that the purposes for which the District Council was seeking to make a byelaw were already covered under powers the Environment Agency had under the Anglian Water Authority Act 1977. The representation stated the District Council's Mooring Byelaw should not be confirmed by the Secretary of State as it would be contrary to s235(3) Local Government Act 1972.
- 3.17 Under s235(3) Local Government Act 1972 a byelaw can only be made if there is no other legislation which governs the nuisance that the byelaw is seeking to cover.
- 3.18 Enforcement of the existing Mooring Byelaw was therefore suspended from 13<sup>th</sup> May 2014, following receipt of the representation from the Secretary of State.

- 3.19 At no point since the Mooring Byelaw was sealed by the District Council in 2001 or as part of the various consultations that have been undertaken, had a conflict of powers to regulate moorings with the Environment Agency ever been raised with the District Council.
- 3.20 The District Council sought Counsel's advice on the legality of the Mooring Byelaw following the representation. Counsel advised that what the District Council was seeking to achieve by the making of the byelaw under its s235 (Local Government Act 1972) powers is exactly what the Environment Agency could do if it wished, under its powers contained in s18 of the Anglian Water Authority Act 1977, and that if the District Council Mooring Byelaw was challenged it is likely to be found to be ultra vires.
- 3.21 The District Council then met with the Environment Agency to discuss the representation and to establish whether the Environment Agency would be willing to amend their own byelaw to include time limited mooring provisions on the District Council's land in Ely.
- 3.22 The District Council offered to share the work that had already been undertaken so that the Environment Agency could amend their own byelaw to include a 48 hour mooring restriction. The District Council also suggested a partnership working arrangement to enforce an amended Environment Agency Byelaw.
- 3.23 The Environment Agency formally confirmed on the 10 September 2014 that they were not in a position to amend their byelaws to assist the District Council with the mooring enforcement issues along Ely riverside.

#### 4.0 ARGUMENTS/CONCLUSIONS

- 4.1 In accordance with Counsels advice, the District Council must not proceed to seek confirmation of the revised Mooring Byelaw (dated 5 March 2014) or continue with enforcement of the existing Mooring Byelaw (27 April 2001).
- 4.2 The District Council must now therefore revoke the Ely Mooring Byelaws sealed by the District Council on the 27 April 2001 and 5 March 2014.

#### 5.0 ALTERNATIVE SOLUTIONS

- 5.1 Following the Environment Agency's confirmation on 10<sup>th</sup> Sept 14 that they will not amend their byelaws, the Community and Leisure Services Team have begun work to look at what options the Council has for managing the moorings on its land. A report will be brought to the Commercial Services Committee in November 2014 to consider the options to regulate the moorings at Ely riverside. These will include:

5.1.1 Do nothing - i.e. no longer regulate the moorings

5.1.2 The possible use of civil possession proceedings (trespass powers)

5.1.3 Issuing a Mooring Charge Notice for boaters breaching the mooring conditions (i.e. exceeding a specified time of free mooring).

5.1.4 Issuing a Mooring Charge Notice for boaters breaching the mooring conditions (i.e. exceeding a specified time of chargeable mooring).

## 6.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

6.1 Counsel have advised that with regard to the two prosecutions the Council brought under the 2001 Mooring Byelaw, the convictions were validly obtained at the time because when the proceedings were brought, the byelaws under which they were brought had not been challenged or pronounced to be invalid. Therefore, Counsel confirmed that there should be no financial implications arising from the revocation of the Mooring Byelaws dated 2001 and 2014 respectively.

6.2 Officer time will be spent in exploring alternative enforcement options as outlined above. The paper being taken to Commercial Services Committee will set out any capital and revenue costs for the different options.

6.3 Equality Impact Assessment (INRA) not required at this stage.

## 7.0 APPENDICES

7.1 Appendix A - Existing Mooring Byelaw – signed and sealed on 27<sup>th</sup> April 2001 by the Chairman of the Council.

7.2 Appendix B – Amended Byelaw – signed and sealed on 5<sup>th</sup> March 2014 by the Chief Executive.

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<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Community and Environment Sub-Committee report dated 16 June 2011	The Grange, Ely	Sarah Steed Senior Legal Assistant (01353) 665555
Community and Environment Committee reports dated 21 November 2012, 13 June 2013, 17 July 2013		

# EAST CAMBRIDGESHIRE DISTRICT COUNCIL

## BYELAWS

made by the council of East Cambridgeshire District under Section 235 of the Local Government Act 1972 for the good rule and government of the District of East Cambridgeshire and for the prevention and suppression of nuisances.

### INTERPRETATION

1. In these byelaws:-

"The Council" means the Council of East Cambridgeshire District

The word "vessel" includes every description of water craft used or capable of being used as a means of transportation on water. **AS EDGED IN RED ON THE MAP ATTACHED**

### EXTENT

2. These byelaws apply to the moorings owned or controlled by East Cambridgeshire District Council between Ely High Bridge and the Railway Bridge at Willow Walk, Ely.

### MOORING

3. No person shall:
  - (a) moor a vessel without reasonable excuse for longer than a maximum period of 48 hours except with the prior written consent of the Council.
  - (b) cause or allow that vessel to return to any area covered by these byelaws within 48 hours after leaving a mooring.
4. No person shall:
  - (a) while the vessel is mooring at, occupying, or casting off from any such mooring place, intentionally or negligently render insecure the mooring of any other vessel occupying such place.

- (b) moor the vessel in such a position or in such a manner at such mooring place as to cause risk or injury to any other vessel or obstruction to the safe and convenient passage or mooring of any other vessel, or to the safe and convenient embarkation or disembarkation of persons therein or therefrom.
  - (c) while the vessel is at mooring carry out repairs/refurbishment works to the vessel except in the case of an emergency
- 5. No person shall permit a vessel to be moored outside the sanitation disposal facilities provided by the Council except for such reasonable period as is required for the purposes of using those facilities.

#### WATERSIDE

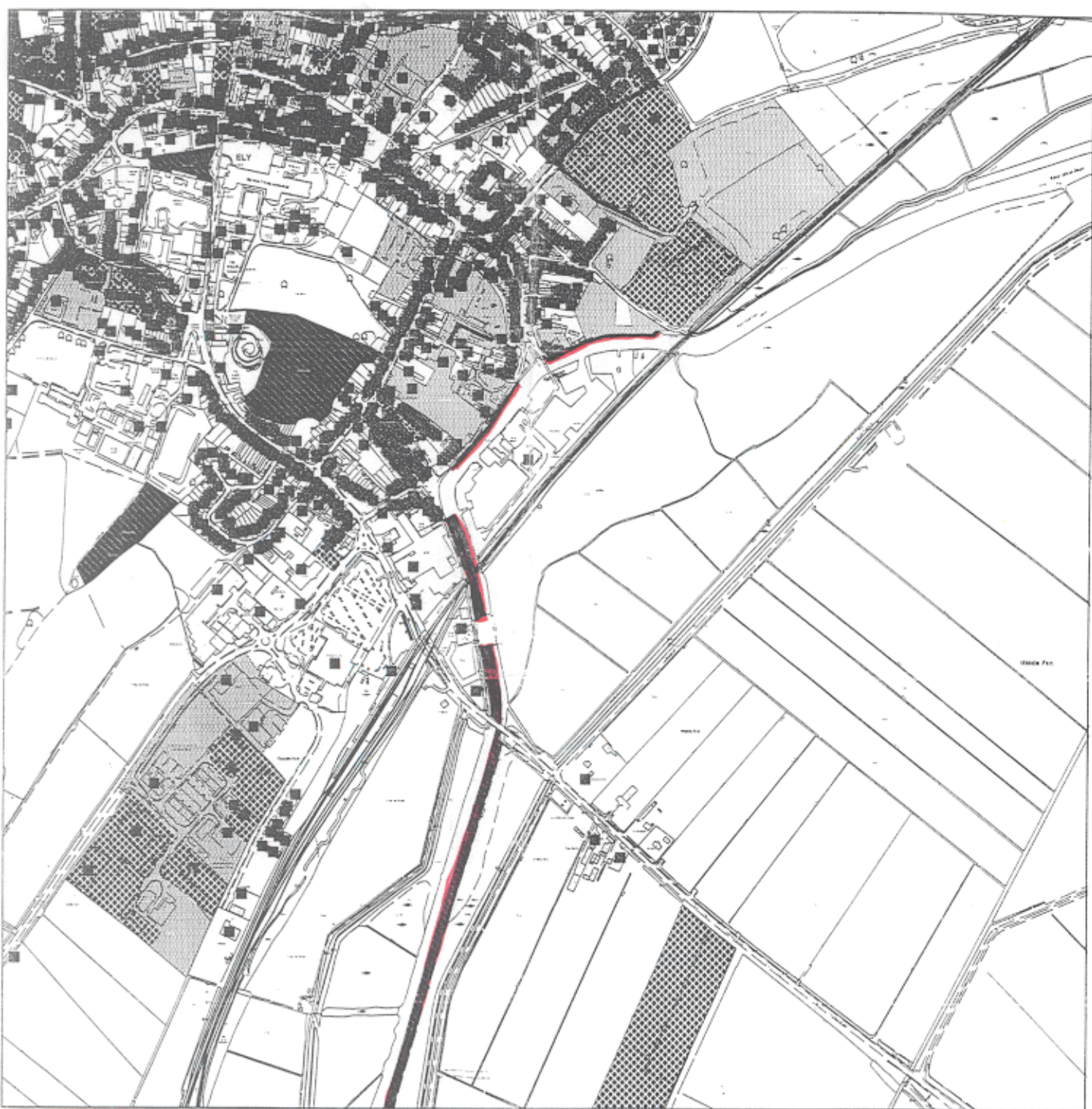
- 6. No person shall use the slipway at Waterside, Ely (which forms part of the length of moorings referred to above) for any purpose other than to launch or land a vessel.

#### SALE OF GOODS OR SERVICES

- 7. No person shall at or near the moorings, sell, or offer or expose for letting to hire, any commodity, article or service, unless in pursuance of an agreement with the Council.
- 8. No person shall except in pursuance of an agreement with the Council, use the moorings for the purpose of:-
  - (a) the sale or the offering for sale of a vessel
  - (b) the maintenance or construction of any vessel or any part thereof.

#### PENALTY

- 9. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.



Km 0.2 0.4 0.6 0.8 1

AREA COVERED BY MOORING  
BYELAW SHOWN IN RED



REVOCATION

10. The byelaws relating to moorings owned and controlled by East Cambridgeshire District Council between Ely High Bridge and the Railway Bridge at Willow Walk, Ely which were made on the 2nd February 1989 and confirmed by the Secretary of State for The Home Department on 3<sup>rd</sup> April 1989 are hereby revoked.

The COMMON SEAL of EAST CAMBRIDGESHIRE )  
DISTRICT COUNCIL was hereunto affixed )  
this 27<sup>th</sup> day of April 2000 )  
in the presence of:- )

Chairman

District Secretary

*Executive Director  
Legal & Democratic Services*



legal/1405

The foregoing byelaws are hereby confirmed by the Secretary of State and shall come into operation on the twenty-third day of August 2001

Signed by authority of the Secretary of State

Head of Unit

Constitutional and Community Policy Directorate

24 JUL 2001

Home Office  
LONDON, SW1.

## EAST CAMBRIDGESHIRE DISTRICT COUNCIL

### BYELAWS

Made by the Council of East Cambridgeshire District under Section 235 of the Local Government Act 1972 for the good rule and government of the District of East Cambridgeshire and for the prevention and suppression of nuisances.

### INTERPRETATION

1. In these byelaws:-

“The Council” means the Council of East Cambridgeshire District

The word “vessel” includes every description of water craft used or capable of being used as a means of transportation on water.

### APPLICATION

2. These byelaws apply to the moorings owned or controlled by East Cambridgeshire District Council between Ely High Bridge and the Railway Bridge at Willow Walk, Ely as edged in red on the map attached.

### MOORING

3. No person shall:
  - a. moor a vessel without reasonable excuse for longer than a maximum period of 48 hours except with the prior consent of the Council.
  - b. cause or allow that vessel to return to any area covered by these byelaws within 48 hours after leaving a mooring.
4. No person shall:
  - a. while the vessel is mooring at, occupying, or casting off from any such mooring place, intentionally or negligently render insecure the mooring of any other vessel occupying such place.
  - b. moor the vessel in such a position or in such a manner at such mooring place as to cause risk or injury to any other vessel or obstruction to the safe and convenient passage or mooring of any other vessel, or to the safe and convenient embarkation or disembarkation of person therein or therefrom.
  - c. while the vessel is at mooring carry out repairs/refurbishment works to the vessel except in the case of an emergency.
5. No person shall permit a vessel to be moored outside the sanitation disposal facilities provided by the Council except for such reasonable period as is required for the purposes of using those facilities.

### SALE OF GOODS OR SERVICES

6. No person shall at or near the moorings, sell, or offer or expose for letting to hire, any commodity, article or service, unless in pursuance of an agreement with the Council.
7. No person shall except in pursuance of an agreement with the Council, use the moorings for the purpose of:-
  - a. the sale or the offering for sale of a vessel
  - b. the maintenance or construction of any vessel or any part thereof

### PENALTY

8. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### REVOCATION

9. The byelaws relating to moorings owned and controlled by East Cambridgeshire District Council between Ely High Bridge and the Railway Bridge at Willow Walk, Ely which were made on the 27 April 2001 and confirmed by the Secretary of State on 24 July 2001 are hereby revoked.

The Common Seal of East Cambridgeshire District Council was hereunto affixed this  
day of 5 MARCH 2014

in the presence of:

[REDACTED]

Head of Legal and Democratic Services / Chief Executive / Principal Solicitor





