

# Report for Department of Communities & Local Government

## STATUTORY CONSULTEE PERFORMANCE 2009/10

### British Waterways (BW)

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## Duty to Respond & British Waterways' Statutory Consultee Status

### Purpose of the Report

Under the provisions contained within the Planning and Compulsory Purchase Act 2004 and in accordance with Circular 08/2005 British Waterways as statutory consultee is required to:

- Provide a substantive response within 21 days upon receipt of the document forming the consultation to pre-application requests for advice from developers and to respond to requests for advice from local planning authorities in respect of registered planning applications.
- Compile a report on annual basis for the Secretary of State on compliance with the provisions under the new Act 2004 and in accordance with the detailed provisions set out in Circular 08/2005.

The purpose of this report is to set out British Waterways' performance in meeting the statutory deadline for the period from 01 April 2009 to 31 March 2010. The report consists of the following information:

- the number of consultation requests received at pre-application stage and the number of such consultation requests which were responded to within the prescribed period;
- the number of registered planning application consultation requests received from LPAs and the number of such consultation requests which were responded to within the prescribed period;
- a brief summary of reasons why the statutory deadline has not been met in all cases;
- key issues and challenges faced by British Waterways as statutory consultee.

### Statutory Consultee Status for Planning Applications

The Town & Country Planning (General Development Procedure) (Amendment) Order 1997 introduces a requirement for a local planning authority to consult the British Waterways Board before grant of planning permission for development likely to affect specified inland waterways, reservoirs, canal feeder channels, watercourses, let offs and culverts. The Order came into force on 1st July 1997.

**In terms of consultation on planning applications Article 10(1) of the Town and Country Planning (General Development Procedure) Order 1995 - paragraph (za) states that the British Waterways Boards should be a consultee on:**

***“Development likely to affect:***

- ***any inland waterway (whether natural or artificial) or reservoir owned or managed by the British Waterways Board; or***
- ***any canal feeder channel, watercourse, let off or culvert,***

***which is within an area which has been notified for the purposes of this provision to the local planning authority by the British Waterways Board.”***

As a statutory consultee for planning applications, British Waterways is consulted by Local Planning Authorities on any proposed development within 150 metres either side from the centre line of the waterway (whether natural or artificial), feeder or 150 metres from the edge of a reservoir owned by British Waterways.

British Waterways is currently consulted on third party planning applications including development affecting:

- structural integrity
- safety of users or neighbours

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- water resourcing and management, land drainage and flood alleviation
- heritage, natural environment, landscape character, public access to and recreation use of inland canal, river navigations, docks and reservoirs.

As part of British Waterways preparing a substantive response, British Waterways seeks advice from range of internal specialists including bridge, geotechnical and structural engineers, hydrologists, ecologists, heritage advisors, etc.

Waterways owned or managed by British Waterways transcend 182 local authority administrative boundaries as illustrated in the table below. This takes account of the recent changes to these administrative boundaries.

<b>Type of Local Planning Authorities in England &amp; Wales</b>	<b>Waterways owned or managed by British Waterways traversing numbers of LPAs Administrative Areas</b>
	All
County Councils	19
National Park Authorities	1
District, City & Borough Councils	95
Metropolitan/Unitary Authorities	41
London Boroughs	16
Welsh Unitary Authorities (County Boroughs & County Councils)	7
Other – UDC's ODA etc	3
<b>TOTAL</b>	<b>182</b>

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**British Waterways' Overall Performance**

In the period between 01 April 2009 and 31 March 2010, British Waterways received in total 2389 pre-application and registered planning application consultations in England and Wales, that is, a decrease of 355 consultations (13%) from the previous year.

<b>Consultation Type</b>	<b>No of Consultations Received in 2009-10</b>
Pre - Application Consultations (including EI Scoping consultations)	110
Registered Planning Application Consultations	2279
<b>Total</b>	<b>2389</b>

Pre-application consultations equated to 4.6% of the total number of consultations received by British Waterways during the period April 2009 to March 2010. This is a marginal increase from the percentage of 4.3% recorded in the previous year.

Of the consultations received, 5 were subsequently withdrawn within the statutory 21 day period and before BW made a substantive response. We therefore consider that BW had a duty to respond to consultations as follows.

<b>Consultation Type</b>	<b>Net No of Consultations Received in 2009-10</b>
Pre - Application Consultations (including EI Scoping consultations)	109
Registered Planning Application Consultations	2275
<b>Total</b>	<b>2384</b>

The following analysis is based on these net figures.

Under the provisions contained within the Planning and Compulsory Purchase Act 2004 and in accordance with Circular 08/2005 statutory consultees are required to provide a substantive response within 21 days upon receipt of the document forming the consultation, to pre-application requests for advice from developers and to respond to requests for advice from local planning authorities in respect of registered planning applications. Where the 21 day deadline had been extended by the agreement of both parties, it is the extended date which performance should be recorded against.

	<b>No of Registered Planning Application Consultations</b>	<b>No of Pre - Application Consultations</b>	<b>Total No Consultations</b>
Total No of Application Consultations in Compliance with Statutory Deadlines <sup>1</sup>	1926	93	2019
Total No of Application Consultations in Compliance with Statutory Deadlines & Agreed Extension <sup>1</sup>	2077	101	2178
Total No of Application Consultations in NON-Compliance <sup>2</sup>	198	8	206

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<sup>1</sup> These figures also include consultations where BW made a substantive formal response within the 21 day timeframe but the application was subsequently withdrawn.

<sup>2</sup> These figures include consultations where a response was made outside of Statutory Deadlines and/or any agreed extension, as well as consultations to which no response was made within the relevant time frame at all.

During the period April 2009 to March 2010, British Waterways provided a substantive response to 2199 consultations in compliance with the statutory deadline ( $\leq 21$  days), which equates 85% of total consultations received. British Waterways also provided a substantive response to a further 159 consultations where the 21 day deadline had been extended by the agreement of both parties.

**During the period April 2009 to March 2010, British Waterways provided a substantive response to a total of 2178 consultations in compliance within statutory deadline and / or agreed deadline extension which equates to an overall response rate of 91%. .**

Therefore, during this period, a substantive response to 206 consultations was not provided by British Waterways within 21 days of receipt or an agreed extension period which equates to 9% of the total number of application consultations received.

British Waterways achieved a response rate of 94% in 2008 – 2009 compared to a response rate of 91% in 2009 – 2010. The principal contributing factor to this downturn in the rate of compliance is that British Waterways underwent a fundamental organisational restructure throughout 2009, with the new structure becoming operational on 1st November 2009. The re-structure resulted in changes in the geographical area of responsibility for the individual planners. There were also several vacancies which arose as part of the re-structure causing under resourcing in certain areas of the planning team. However, since January 2010 these vacant posts have been filled.

However, under the new structure, the planners' remit has become more focussed and a new centralised system for logging the planning application consultations received supported by dedicated administrative support has been introduced which should lead to improvements in performance in 2010/11.

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**Reasons for Non Compliance with Statutory Deadline for Consultations**

As stated above, a substantive response to 206 consultations was not provided by British Waterways within 21 days of receipt or an agreed extension period. For 50% of these consultations however, substantive responses were provided within seven days of the deadlines.

<b>No of additional days that statutory deadline and agreed extension of time exceeded</b>	<b>No of Consultations</b>	<b>%</b>
1 day	35	17%
2 - 3 days	36	17%
4 – 7 days	33	16%
8 – 14 days	46	22%
15 – 21 days	18	9%
22 – 28 days	13	6%
> 28 days	14	7%
No response made / date not properly recorded	11	5%
<b>TOTAL</b>	<b>206</b>	<b>100%</b>

The reasons recorded for non compliance with statutory deadline and agreed extensions of time for the 206 consultations during the period 01 April 2009– 31 March 2010 are listed in the table below.

<b>Principal reasons for non- compliance</b>	<b>No of Consultations</b>	<b>%</b>
Verbal response given within statutory deadline but written substantive response exceeded statutory deadline or agreed extension of time	0	0%
Accompanied by a full Environmental Statement	1	<1%
Amendments subsequently received	6	3%
Where an extension of time request was not agreed by applicant	17	8%
Resourcing Issues e.g. recruitment & retention; sick leave; annual leave; internal consultations	149	72%
Application consultation sent to the wrong BW office	2	1%
Public Holiday	5	2%
Other	26	13%
<b>TOTAL</b>	<b>206</b>	<b>100%</b>

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#### Key Issues and Challenges faced by BW as Statutory Consultee

As identified last year, there are three key issues which continue to affect of BW's effectiveness as a statutory consultee.

1. 4.6% of all consultations received were pre-application requests for advice from Local Planning Authorities and / or developers, including EIA Scoping Reports. This is a major concern for British Waterways as it is very important for Local Planning Authorities and developers to recognise from the outset that new waterside developments place extra liabilities and burdens upon British Waterways and ultimately the public purse.
2. Very few decision notices are received by British Waterways from LPAs. Copies of decision notices and planning obligations agreements (S106 Agreements) are required by British Waterways in order to:
  - Assist British Waterways in checking compliance with conditions
  - Monitor British Waterways' effectiveness and value as statutory consultee
  - Make appropriate comments on future applications given the site history

It would be helpful if LPAs were obliged to provide electronic copies of decision notices within seven working days of being issued to the applicant.

3. There is an issue related to the delay between when LPA's send out the notification of the application and when the documents appear on the web site which in some cases can be sometime. Whilst BW supports electronic consultation the documents, they need to be available at the time when the consultation is received. British Waterways therefore seeks support from DCLG in relation to encouraging LPAs to adopt the practice of the information being available online prior to the consultation being sent out.

However, with the exception of the last issue, the other two issues appear to be addressed within the draft new PPS on Development Management and supporting annexes, which is welcomed and supported.

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