

# Report for Department of Communities & Local Government

## STATUTORY CONSULTEE PERFORMANCE 2010/11

### 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 2010 to 31 March 2011. 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
- water resourcing and management, land drainage and flood alleviation

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- 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 2010 and 31 March 2011, British Waterways received in total 2657 pre-application and registered planning application consultations in England and Wales, that is, an increase of 268 consultations (11%) from the previous year.

<b>Consultation Type</b>	<b>No of Consultations Received in 2010-11</b>
Pre - Application Consultations (including EI Scoping consultations)	128
Registered Planning Application Consultations	2529
<b>Total</b>	<b>2657</b>

Pre-application consultations equated to 4.8% of the total number of consultations received by British Waterways during the period April 2010 to March 2011. This is a marginal increase from the percentage of 4.6% recorded in the previous year.

Of the consultations received, 6 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 2010-11</b>
Pre - Application Consultations (including EI Scoping consultations)	127
Registered Planning Application Consultations	2524
<b>Total</b>	<b>2651</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>	2253	111	2364
Total No of Application Consultations in Compliance with Statutory Deadlines & Agreed Extension <sup>1</sup>	2417	121	2538
Total No of Application Consultations in NON-Compliance <sup>2</sup>	107	6	113

<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.

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<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 2010 to March 2011, British Waterways provided a substantive response to 2364 consultations in compliance with the statutory deadline ( $\leq 21$  days), which equates 89% of total consultations received. British Waterways also provided a substantive response to a further 174 consultations where the 21 day deadline had been extended by the agreement of both parties.

**During the period April 2010 to March 2011, British Waterways provided a substantive response to a total of 2538 consultations in compliance within statutory deadline and / or agreed deadline extension which equates to an overall response rate of 96%. .**

Therefore, during this period, a substantive response to 113 consultations was not provided by British Waterways within 21 days of receipt or an agreed extension period which equates to 4.2% of the total number of application consultations received.

British Waterways achieved a response rate of 91% in 2009 – 2010 compared to a response rate of 96% in 2010 – 2011. *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 113 consultations was not provided by British Waterways within 21 days of receipt or an agreed extension period. For 58% 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	41	36%
2 - 3 days	11	10%
4 – 7 days	14	12%
8 – 14 days	29	26%
15 – 21 days	5	4%
22 – 28 days	3	3%
> 28 days	6	5%
No response made / date not properly recorded	4	4%
<b>TOTAL</b>	<b>113</b>	<b>100%</b>

The reasons recorded for non compliance with statutory deadline and agreed extensions of time for the 113 consultations during the period 01 April 2010– 31 March 2011 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	0	0%
Amendments subsequently received	1	<1%
Where an extension of time request was not agreed by applicant	0	0%
Resourcing Issues e.g. recruitment & retention; sick leave; annual leave; internal consultations	91	81%
Application consultation sent to the wrong BW office	1	<1%
Public Holiday	0	0%
Other	20	18%
<b>TOTAL</b>	<b>113</b>	<b>100%</b>

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

As identified the last two years, there are three key issues which continue to affect BW's effectiveness as a statutory consultee:

1. 4.8% 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.

The first two issues were going to be addressed within the draft new PPS on Development Management and supporting annexes, which unfortunately has been mothballed post the General Election. However, there is an opportunity to address the first issue as part of the Localism Bill. Clause 102 amends the Town and Country Planning Act 1990 ("the TCPA") by inserting new sections to require prospective developers to consult local communities before submitting planning applications for certain developments. Is it possible to include an obligation for prospective developers to consult statutory consultees before submitting planning applications for certain developments too? Compulsory pre-application consultation for developments above certain thresholds is critical to improving statutory consultee performance in terms of speeding up the process.

#### Measures to Streamline both External & Internal Consultation Arrangements

British Waterways has undertaken a substantial amount of work this year in developing proposals to streamline consultation arrangements associated with our role as a Statutory Consultee. Research has revealed that BW makes no comment or no objection to 66% of the consultations we receive (principally minor and householder application consultations received). British Waterways has developed a project to reduce the number of low risk/non contentious planning consultations received from Local Planning Authorities without significantly increasing health and safety and structural integrity risk, which will enable us to focus resources and effort upon planning consultations which are likely to either impose a risk/burden/liability upon our infrastructure. British Waterways has also developed a project to improve the efficiency of internal consultation on such planning applications to:

- provide a consistent approach across the organisation;
- promote clear and well-argued responses from BW which ensure that our interests are properly considered by decision makers;
- ensure that BW's position is defensible in planning terms,
- avoid BW being exposed to risk at planning appeals, where there is potential for appellants to claim costs from third parties; and

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- reduce the time spent on consultation by the organisation.

The external consultation project has resulted in a two tier consultation zone being created, one for household and minor scale planning applications and one for major and EIA scale planning applications. The reduction in the number of consultations received will be achieved by changes to the consultation zone for household and minor application consultations, essentially reducing the consultation zone from 150m to 50m except in certain circumstances. The precise circumstances when a reduction in the consultation zone to 50m would not be appropriate were derived from discussions with internal technical experts within the organisation and an analysis of risk from historic applications which, under the proposed draft arrangements, British Waterways would no longer be consulted upon. As a result the consultation zone will not be a blanket 50m in width but will vary in width according to the assets found in that location. For minor and Household-scale application consultations the notified area will in general reduce to a maximum of 50m from the relevant waterway. There are however exceptions to this in respect of particular asset types where the notified area will be either a maximum of 75m or 150m, depending on the asset type. The new consultation arrangements will be rolled out to Local Planning Authorities and will be supported by guidance to assist Local Planning Authorities in determining when to consult British Waterways in July 2011.

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