

National Assembly for Wales

Sustainability Committee Inquiry into access to inland water in Wales

Response from the Canoe Camping Club, a special interest section of the Camping and Caravanning Club

Contributor for the Canoe Camping Club:

Paul Kent

17 September 2009

What is your interest in the issue of access to inland waterways

The Canoe Camping Club has a keen interest in access to and along inland waters with a UK wide membership drawn from the Camping and Caravanning Club as the parent organisation. The main activity is canoe touring on inland waters that can be for a day or longer periods if canoe camping, when equipment is taken in the canoe.

The Canoe Camping Club was established in 1933 and structured on regional groups and individual members who canoe on numerous inland waters in the UK to include those in Wales and also overseas.

The membership undertakes canoeing in canoes and kayaks on all types of water – lowland rivers with placid water, upland streams, river and canal navigations and coastal waters. The club promotes canoeing, care for the natural environment and supports actions to improve public access to and along inland waters.

Access to inland water should not be viewed as an issue solely between canoeists and landowners/fisheries/angling interests. It is a matter of public interest for all who wish to use and enjoy the natural environment, and importance of accountability taking into account the extent of public funding sourced in its upkeep.

Canoeing contributes to government agendas for physical and mental health, education, environmental studies, local economies, employment, social cohesion etc.

It is an injustice that a growing and important sport and recreation with a participation rate of some 1.5 million people (1) canoeing, a record of international and Olympic success only has access to less than 4% of inland waters in Wales and England.

Are you a member of an organisation related to your use of water

The Canoe Camping Club is affiliated to the British Canoe Union that is recognised by government and sports councils as the national governing body for canoeing. Many members have membership of the British Canoe Union through one of the federal nation bodies – Canoe Wales, Canoe England, Scottish Canoe Association and Canoe Association of Northern Ireland.

Which stretch/es of water do you own/use/manage?

Members resident in Wales or who travel to the country, include their canoeing on the Rivers Conway, Dee, Glaslyn, Severn, Wye, Usk, Dwyrhyd, Mawddach, Neath, Monnow, Tywi, Taff, and Trywern. Much of this activity is on “informal” or “de-facto” form of access when environmental conditions are suitable based on appropriate water levels.

Legal rights

Are you happy that your legal rights are clear and well defined?

No.

Can you briefly outline your understanding of your legal rights over the stretch of water/s that you own/use/manage

The law is unclear and leads to uncertainty of public access.

Unlike elsewhere in the world the public cannot assume there is an automatic right for access to inland waters.

An owner of the bank of a river owns the land under water to the middle of the river, or the whole width if both banks are owned.

Students of law maintain that sections of Magna Carta have not been repealed and these continue to make provisions for a public right of access to all inland waters in Wales and England.

Acts were passed on many rivers in England and Wales to ensure they were free of obstructions for public navigation.

Furthermore, research has revealed that prior to 1830 it was generally accepted the public had a historical right of access to rivers - "The Right of Navigation on Non-tidal Rivers and the Common Law", by Douglas Caffyn, 2004. Significantly, Caffyn's argument that a public right has been lost has not been challenged since publication..

However, the law has been biased by legal opinions since 1830 to diminish this public right and weighted in favour of riparian owners to extending their control to include navigation; and created a lack of clarity that a public right to inland waters exists.

The Canoe Camping Club believes the public has been usurped of rights to inland waters in Wales and England.

Would you like to see any changes to your legal rights?

Yes

If yes, what changes would you like to see?

The restoration of public rights to inland waters by recognition that Magna Carta stands or by primary legislation for a statutory right, whatever is the most effective means.

Changes should build on Common law and historic rights that give public access for sections the Rivers Severn and Wye. These places can attract high visitor numbers and at times create a "honey pot" status. Access rights to inland waters would give canoeists the confidence to use other waters and relieve the busier locations.

The public should be able to enjoy a right of access to inland waters as there is for access to mountain, heath, down and registered commons that is generally on an all year round basis. Similar provisions for public access rights to the coast are forthcoming leaving inland waters the exception. There is a standalone case for water to be consistent with these other policies for access to the natural environment.

Are you aware of any legislation that exists in other countries that could be used in Wales?

Yes.

The Land Reform (Scotland) Act 2003 that makes provisions for public access with responsibilities supported by an Outdoor Access Code. It is modern legislation to meet and justly provide access to the natural environment. From experience in Scotland, the Canoe Camping Club believes this is a viable format for Wales to adopt for providing public rights to inland waters and the use of unpowered vessels.

There is a long standing and internationally recognised format for public access in Scandinavian countries. Australia, New Zealand and South Africa have legislated for public rights to water. More generally, elsewhere in the world the public can assume there is a right for access to inland waters.,

Voluntary agreements

Do you have any experience of voluntary agreements for access to the stretch of water/s you own/use/manage

Yes

If yes, please briefly outline the agreements that exist and your experience of how they operate.

They should not be viewed as an agreement with canoeists, and simply a private arrangement imposed by landowners, fisheries and angling interests on the public. Even when complying with arrangements canoeists can be subjected to abuse and harassment from other users.

As such these private arrangements offer no long term security and can be lost when land/property ownership and attitudes change. They are not fit to provide rights.

Negotiations are invariably difficult, time consuming and known to fail.

The Environment Agency have had experience of voluntary arrangements failing to materialise in their work on sections of the Rivers Wear (8km), Mersey (4km) and Waveney (16km) as recorded in the report by the University of Brighton – “Putting Pilot Voluntary Canoe access Arrangements in Place”, September 2006. The same work included negotiations on the River Teme that did not conclude in an arrangement, such that “de-facto” canoeing continues.

Arrangements have wide variations in conditions, and apply to only certain or short periods (a few days in some instances) in the year. If river conditions are unsuitable then the opportunity to canoe another time outside the designated period is denied. It is a confusing mix and brings difficulties to planning activities.

Voluntary access arrangements are not mapped introducing more uncertainty.

River Wye - The Wye Navigation Act indicates public access to the entire catchment and does not repeal that fact in the earlier Acts. This gives rise to query how the Wye and Usk Foundation can impose an access arrangement.

The foundations involvement (with the use of public funding) supported by the Environment Agency has resulted in restrictions on the Upper Wye. It is not lost on canoeists that from October to March there are no constraints on canoeing. From January to March, angling and canoeing share the river and begs the question why is canoeing not allowed outside these periods, although there is a spate condition status with a questionable height setting. Canoe Wales will no doubt offer more detail on the confusion of access arrangements on this river.

River Usk – access is restricted to winter months and by prior arrangement on some sections. There is a spate status but this is more to do with protecting angling opportunities rather than the environment.

R Dee - it is ironic canoe access was disrupted if not lost by a dispute attributed between angling and fisheries interests who could not agree canoe access arrangements. Access to the river was already restricted to a few days a year. There is now no access agreement on one of the largest rivers in Wales and there is uncertainty of access. Not only did canoeists lose out, the economic benefit to Llangollen generated by canoeing was lost.

River Mawddach – the Canoe Camping Club was hopeful an access arrangement would materialise on this river and understand negotiations have failed.

Would you like to see any changes to the voluntary agreements?

No.

The situation just described calls for a reality check and acknowledgement by the authorities, to include the Environment Agency, that voluntary access arrangements are fundamentally flawed. Furthermore they have not worked for other forms of land. It is not untenable to state they will not and have not worked for water.

A resolution is for the restoration of public rights to inland waters by recognising Magna Carta stands or by primary legislation for a statutory right, whatever is the most effective means.

If yes, what changes would you like to see?

Not applicable.

Are you aware of any voluntary arrangements in other countries that could be used in Wales

No.

Voluntary arrangements in England mirror the situation in Wales

Please can you briefly outline what you think are the key issues for recreational access to inland water in Wales and how you would like to see them addressed

Fundamentally the key issue is creating public rights with responsibilities and clarity for all based on legislation and an environmental based access code. Voluntary access arrangements are not fit for purpose.

There is a compelling case for improvements to the water environment derived from public funding and benefitting private assets should be conditional on the wider benefit to the community and this can be in the form of access rights to inland waters.

NB. Identifying the extent of public expenditure on the water environment and projection of this funding would be an interesting line to pursue, especially with the Water Framework Directive.

The views expressed above take the following into consideration:

The current legal position on property ownership and riparian rights and more particularly the control over the access to that water assumed by owners.

Historic research and the loss of rights.

Many riparian owners and fisheries/angling interests wish to maintain sole use of inland waters and openly if not vigorously resist the use of inland waters by others.

Voluntary agreements are private with no security of rights

Angling interests act as landowners when they do not have that capacity as tenants.

Canoeing is environmentally benign.

Licensing and charging for canoes is not justified. For angling and fisheries interests to suggest that since they fund fisheries and the upkeep of the water environment for a matching payment to be made by canoeists is spurious. Canoeing cannot be equated with angling (the taking of fish) when canoeists do not need the requirements of anglers. The mechanisms and arrangements for angling required by the law and negotiated by anglers are not transferable to other recreation.

For the taking of fish In England and Wales, freshwater anglers are required by law to have a Rod Licence issued by the Environment Agency. Rod Licence income partly funds the Environment Agency Fisheries function that has a statutory obligation to protect and replenish fish stocks by policing the activities of anglers and fisheries owners, and generally enhance fisheries. The income does not fund the upkeep of the water environment *per se* or generate/facilitate access rights.

Further funding for the Agency's fisheries function is from Grant in Aid (GIA) sourced from general taxation. GIA for fisheries in Wales is approx £3 million and dedicated to salmon and sea trout. This amounts to a subsidy from taxpayers, as income from the sale of salmon rod licenses in England and Wales is £1.3 million.

NB. Further comment on the upkeep of the river environment follows below.

The perceived potential damage to fisheries by canoeing is an argument for resisting canoeing and charging canoeists put forward by fisheries/angling interests. All need to recognise the Environment Agency report entitled "W266 - The Effects of Canoeing on Fish Stocks & Angling that concluded "there is no empirical evidence linking canoeing with damage to fish spawning grounds or damage to fish stocks.".

The view of the Environment Agency is that they could not police such an arrangement. As relevant from the Agency Report W266 is the finding that "It is difficult to envisage how a parallel can be drawn with a national license for canoes in relation to the service that would be provided. In the absence of an identifiable service provided in return this would inevitably be regarded by canoeists as an unjustified charge or simply another tax."

The idea of such a canoe licence is further dismissed by Environment Agency policy. There is no cross subsidy between the income streams for Coarse and Trout rod licenses and Salmon rod licenses i.e. the former to subsidise the latter or vice versa, to allow funding from canoeing or other sources.

Upkeep of the water environment, most canoeists contribute to improving the water environment through local and general, taxation and water industry bills for upgrading wastewater treatment discharges. More funding will have to be provided for measures demanded by the Water Framework Directive.

This was highlighted in the Environment Agency report on the Progress in Delivering the Fisheries Strategy (November 2008) that drew attention to the increased lengths of rivers and canals supporting breeding populations of native fish - *"The length of river complying with the freshwater Fisheries Directive has increased by 1,426km. This is as a result of the investment from water companies of £3.5 billion in improvements to 3,500km of rivers and 300km of coastal waters."*

EU grants, the Lottery and other funding from the public purse for water environment improvement schemes have brought direct and indirect benefits to fisheries and angling, but it is less evident there is a wider benefit derived by the wider community.

EU Objective One funding for £5.1 million is a notable example when fisheries and angling were the major beneficiaries. This funding can improve fish stocks in quantity and species, and the quality of the recreational angling experience; enhancing the financial value of fisheries and the income from fishing rights. Fisheries are mostly in private ownership and marketable assets.

These improvements have resulted in reports where the custom and practice of canoeing activity is being challenged.

Access policies – should be innovative, inclusive and encourage participation

The Environment Agency Policy on the Sustainable Management of Water, Wetlands and Waterside Access states: "We will promote increased access where it does not adversely impact upon existing use and users, or the economic and conservation value of the site and associated area. We will encourage access where managed solutions can be found to remove adverse impacts, resources allowing"

The policy does not convey the Agency will be imaginative in creating access and supporting new users and recreation activities. It promotes the *status-quo* and exclusivity rather than inclusive use; and fosters the attitudes of angling /fisheries interests to monopolise the use of waters.

The Environment Agency should revise this statement to be more inclusive if they are to progress their water recreation strategy. The Agency paper "A better place to play – our strategy for water related sport and recreation (2006-2011) " says: Our recent research (Feb 2005) indicates that nearly half the population of England and Wales enjoyed time on or near water in the previous 12 months"

Also, the Canoe Camping Club believes the National Parks and Access to the Countryside Act 1949 has not been used for gaining canoe access and should be employed or the concept refreshed in new legislation. Part V of this Act is retained in the Countryside and Rights of Way Act (2000) which allows for access agreements and orders to be continued to be made on waterways and the waterside. Such agreements can make specific provision for access to users of canoes.

Thank you for the opportunity to present these views to support the case for access rights to inland waters in Wales.

1 According to the RYA Watersports Survey there are an estimated 1.1 million people who take to the water in a canoe each year. This figure does not include the 600,000 young people who attend BCU affiliated activity centres.