

Current CCW Position in relation to petition P-03-118 - Welsh Canoeing Association

The Petition

P-03-118 - Welsh Canoeing Association

Petition Received: 10 April 2008

Lead Petitioner: Ashley Charlwood

Number of Petitioners: 9,893

Petition Wording:

'The Welsh Assembly Government is urged to consider and implement a Bill to benefit Wales that would enshrine access rights and responsibilities for the public to and along natural resources in the same way that the Scottish Land Reform Act encourages co-operative use of the outdoors for healthy, low impact recreation.

This bill must provide and permit access to and along non-tidal water in the face of the massive lack of legal clarity and restrictions that exist at present, which act as a barrier to sport and recreation and the promotion of Wales as a place to visit for Adventure Tourism.'

CCW Position

The issue of securing opportunities to enjoy waterspace for a range of recreational purposes is one that has been evident for some time. In summary, the activity of CCW to date suggests the following key points in relation to our own position and what has been requested of us by WAG:

1. We've not been asked by WAG about statutory access to water since 1999, and then it was as a possible add-on to the 'open country' access that formed the main area of advice.
2. A review of international approaches suggests that all countries studied have some form of 'right of access', supplemented with management approaches to reduce inter/intra user conflict and to safeguard the environment.
3. We have responded to WAG requests to support strategic planning for water related recreation and to deliver 'exemplar' projects. These have explicitly been "within the context of current legislation" and by "non-statutory means".
4. Our approach in relation to features of conservation interest is on a case by case basis, acknowledging that it is dependant on a number of factors including nature and intensity of activity as well as the type of habitat and particular local circumstances.

Background in support of the statements

1 Advice in relation to CRoW Act 2000 (1999) and Access to the Coast (2006)

In 1999, as part of the consultation and drafting period of the CRow Act 2000, CCW at the request of Government confirmed its advice about ways forward for securing increased access to 'other types of open country'. Watersides and waterspace were amongst the 'other types of open country' considered. The proposals made by Government for increasing access opportunities in open countryside had moved forward on the basis of provision for pedestrians, so much of CCW's advice at the time was governed by this consideration. This meant that the recommendations were primarily focussed on pedestrians at the waterside rather than other users of waterspace.

Within the constraints of the advice sought and the timetable for providing the advice CCW was cautious in its recommendations, and concluded that access to water space and waterside should not be conferred as a statutory right at that time but that "...Highway Authorities and Environment Agency in partnership with CCW and working through local access forums should confirm the apparent gaps in access provision for pedestrians along water courses and water space for other recreational users - canoeists in particular."

In relation to securing access on foot to mountain, moor, heath, down, and common land, CCW concluded that a statutory approach was required to meet the five tests laid down by government of sufficient quality, extent, permanency, clarity and certainty.

Since 1999 CCW has not been asked by the Welsh Assembly Government for any specific advice on statutory rights of access to water, and therefore we have not up-dated our recommendation with regard to current knowledge on recreation demand. It is therefore our position that this advice is historical rather than current.

The Welsh Assembly Government instructed CCW to "scope work on extending public access to the coast with recommendations on possible implementation options being submitted to the Assembly Government by February 2006."

Based on our investigations, we advised that the greatest benefits would come from improving access at localities: creating circular walks and enhancing standards and facilities so that more people can enjoy the coast. The principles applied when drafting Part 1 of the CROW Act also apply to coastal access. Thus, quality, clarity, certainty and permanency all have a huge bearing on the usefulness of access on the ground. The total extent of access on the coast is less significant. The ability to navigate through and across this narrow corridor has emerged as far more important to out-door recreation on the coast. Therefore, clear, permanent routes and access points are very important.

2 Review of International Approaches

We conducted research (April 2007) into international approaches to securing access for water-based recreation and its subsequent management. The research reviewed a wide range of countries, encompassing most of Europe (including Wales, England, Scotland and Northern Ireland), along with the USA and New Zealand. For most countries there was a difference between how access was 'secured' and how subsequent use was then managed. Under these two different areas, a wide variety of approaches were found, and the research conducted a series of interviews with key stakeholders in order to understand their potential applicability to Wales.

The review of other countries found that the 'voluntary' approach only existed on a countrywide level in England and Wales. The usual approach of seeking temporary permission for use of the water from the landowner and / or the holder of the riparian rights has also now been supplemented by the first example of voluntary dedication under CRoW on the River Mersey, achieved through the work of the Environment Agency. Overall, it was felt that this type of approach had the potential to help protect environmentally sensitive sites (as it relies on permission being granted), and could be used to control numbers of users. However, the short-term nature of voluntary agreements and the ability for permission to be withdrawn at any time leads to a relatively unstable access situation, although this is overcome through dedication. The need to gain voluntary permission can also make it difficult to provide access in the places where it is most needed.

How applicable a 'right of access' might be in Wales resulted in a wide range of different responses from the stakeholders, with some supporting this approach and others considering that it would not be appropriate. On the positive side, it was felt that granting informal recreation users a right of access would provide clarity in relation to where people could go, and that in turn could have potential benefits for increasing participation. However, strong concerns were also raised as to potential conflict between different users and the possibility of activities damaging sensitive environmental sites.

It would appear that other countries that have a right of access have addressed these potentially negative impacts through applying one or more of the following 'management' approaches, usually to specific areas as and when required:

- Codes of Conduct
- Time Zoning
- Area Zoning
- Management Plans
- Canoe Trails
- Permits, Fees and Licences

The research commissioned by the Countryside Council for Wales was not intended to provide the definitive answer to what single approach should be used to provide access to water for recreation in Wales. Instead, it has provided an extensive review of a wide range of possible approaches, particularly in relation to how recreational use could be managed where required. Most importantly, with the inclusion of numerous case studies from around the world, it provides practical, real-life examples of how such approaches can be successfully employed to address specific recreation management issues.

3a A Strategic Plan for Water Related Recreation in Wales

At the request of WAG, CCW was a member of the steering group that supported the Environment Agency Wales on the development of the strategic plan for water-based recreation in Wales, published in 2008. The purpose of the Strategic Plan was to identify clear and succinct priorities for the protection and development of water related recreation in Wales, within the context of the current legislation.

3b Water 'Exemplar' Projects

Running concurrently with the development of the strategic plan, our remit letter from WAG for 2007/08 charged us to initiate pilot projects to facilitate potential new opportunities for recreational access to water. In a letter from WAG it was made clear to CCW that: "Ministers are very keen to secure greater public access

to rivers and lakes in Wales for recreational use. They wish to see this facilitated by non statutory means so far as possible”.

In partnership with Forestry Commission Wales we supported 5 such projects delivered by Forestry Commission Wales, British Waterways, National Trust, Wye and Usk Foundation, and Pembrokeshire National Park Authority. We are shortly to receive an evaluation report of how the projects met the four tests laid down by WAG:

- A. securing a geographical spread of projects across Wales (and reasonably near main centres of population if possible) and which have potential to help secure new practical water access;
- B. covering different types of water (fast flowing rivers; estuaries; lakes/reservoirs; main rivers)
- C. with potential for replication elsewhere;
- D. supporting a range of recreational uses (not just fishing and canoeing) with key stakeholders appropriately engaged.

4 Impacts on features of special conservation interest

As regards the regulation of canoeing activity (or other recreational activity) in relation to conservation features, the legal situation is complex and the means available are governed by local circumstances.

Where rivers lie within Sites of Special Scientific Interest (SSSI) which are designated for habitats and species sensitive to the potential impacts of canoeing, landowners wishing to carry out, or permit canoeing would need to obtain CCW's consent. Such consent can be withheld or issued subject to conditions (such as to control the timing of the activity, access points and so on). In some areas, recreational activities such as angling and canoeing are managed on a non-statutory basis through agreements between riparian landowners and sporting clubs and associations. Where canoeing activity takes place without the agreement of landowners, CCW's consenting powers under the SSSI provisions do not apply.

In some rivers where a licensing authority exercises its powers, for instance for rights of navigation, it is required to have regard to the implications of the activity upon any SSSI's, or 'Natura 2000' (SAC or SPA) sites designated for their wildlife under EU directives. This applies even if the area where activities are to be permitted lie outside the designated conservation areas. In general, before permitting any potentially damaging activities, the authority must consult with CCW and take account of our advice in deciding whether, and under what conditions, to permit the activity.

To our knowledge, the impacts of canoeing on, for example, fish populations have not been studied in great detail. However, the majority of fish spawning occurs at night and outside of the main canoeing periods. The most likely disturbance from canoeing during spawning periods would be when water levels are low and risk of physical disturbance to the riverbed is higher.

Whilst research has shown that trampling by people (which may include anglers and canoeists embarking or disembarking) and livestock, of gravel beds where fish spawning occurs, can significantly reduce the survival rate of fish eggs, we are not aware of any study that shows canoeing activity to directly affect fish spawning.

In conclusion, it is CCW's view that any need to manage canoeing or any other activity on waterways to protect features of special conservation interest would be dependant on a number of factors including nature and intensity of activity as well as the type of habitat and particular local circumstances.

John Watkins
Recreation Policy
Countryside Council for Wales

04 February 2009

