

4 The Hampshire and Isle of Wight Wildlife Trust have received £1,600,000 grant from the Heritage Lottery Fund, £400,000 direct support from the Environment Agency together with further support from Winchester City Council, Eastleigh Borough Council, Southampton City Council and Hampshire County Council to undertake the Itchen Navigation Restoration project. The project did include improved access to and from the water but sadly use of these facilities is limited to dogs! (See <http://www.bbc.co.uk/news/uk-england-hampshire-13737071>)

5 Revd. Dr Douglas Caffyn has undertaken extensive research (for which he was awarded a Master of Laws Degree and a PhD) which provides compelling evidence to support his conclusion that "In common law there is a public right of navigation on all non-tidal rivers which are naturally physically navigable by small boats and on those rivers which have been made physically navigable at public expense."

In answer to a Freedom of Information request, DEFRA have confirmed "We are aware of the work of the Revd. Dr Douglas Caffyn but have not sought or received advice on it nor formed a legal opinion on the validity of his research."

Conclusion.

Despite

- the evidence of a public right or navigation,
- the wish of democratically elected local government to make the river available for recreational use,
- the full involvement of the Hampshire Countryside Access Forum,
- the expenditure of very significant public funds on the Itchen Navigation Restoration project
- the evidence from the Environment Agency that canoeing does not harm fish stocks
- and without the benefit of specialist legal opinion on the research and conclusions of Revd. Dr Caffyn.

There is no agreement over recreational navigation of the River Itchen and no prospect of getting one.

DEFRA's declared objective of striking "a balance between the different uses which our non-tidal rivers serve" is not achieved. The "voluntary agreement" approach is incapable of delivering balance while any one party perceives it has a veto on the nature of the agreement.

Owen Patersons confidence is misplaced.

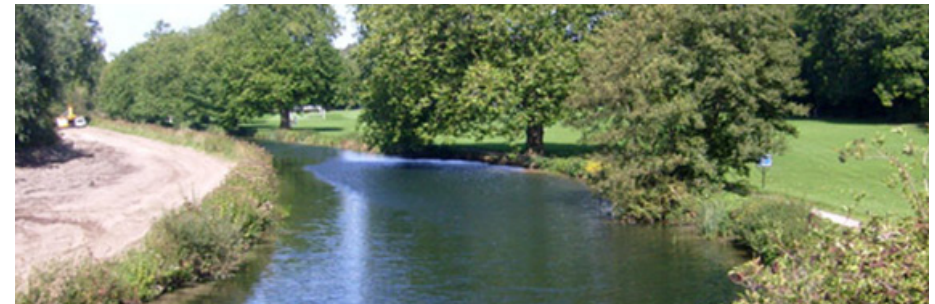


Why DEFRA's Policy is Incapable of Meeting its Objectives

The observations of Owen Paterson, Secretary of State for the Environment, Food and Rural Affairs in response to the Petition of Douglas Malpus, Southport (<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121211/petntext/121211p0001.htm>) completely fail to address the issues raised but does serve to summarise DEFRA's objectives and their policy for delivering them.

"The Government believe that a balance needs to be struck between the different uses which our non-tidal waters serve and between the enjoyment of property rights by landowners and the needs of others using the waters....

The Government therefore believe that those wishing to use privately owned unregulated waterways should work with the relevant landowner to agree access.... However, I am confident that a voluntary approach allows appropriate decisions to be made between local people, according to their area's own recreational, business and conservation needs."



How it works in practice

The following is an example of how the process of "local agreement" promoted by DEFRA works in practice on the River Itchen and the Itchen Navigation. The Itchen runs from Alresford via Winchester to Southampton Water. Improvements for navigation date back to at least the 10th century in the form of Saxon charters. The Itchen was subject to Parliamentary Navigation Acts in 1665, 1767, 1795, 1802, 1811 and 1820.



Recent Attempts to gain access by agreement in line with DEFRA policy

18 November 2008 - Winchester City Council agree that “The river must also be made available for recreational use” – See Winchester City Council, 18 November 2008, River Itchen maintenance Issues, Conclusion, page 6, Appendix A.

21 April 2009 – Hampshire Countryside Access Forum receive presentations from Canoe England and the Test & Itchen Association and agree to set up a HCAF sub group to investigate whether HCAF have a role and report back. - See Hampshire Countryside Access Forum, Minutes of meeting 33, page 1.

February 2010 – “Members of the sub-group had met with Tom Davis of the Test and Itchen Association in February to enquire whether they would be open to negotiating access on the two rivers.” See Hampshire Countryside Access Forum, Minutes of meeting 37 – item 8, page 8.

22 June 2010 – Letter from Test and Itchen Association confirms “Following the meeting the matter has been discussed at both sub-committee and main Board meetings and the answer which I have been asked to convey back to you is that it is not” (in a position to open negotiations on opening up boat access to the two rivers) – See letter from Test and Itchen Association 22 June 2010.

6 July 2010 – Hampshire Countryside Access Forum reviews the response and agree that it is “regrettable and they were disappointed” but that it was “better not to raise expectations by opening up negotiations that were unlikely to go anywhere.... it was agreed that access on the Test and Itchen should not be pursued at this time.” - See Hampshire Countryside Access Forum Minutes of meeting 37 – item 8, page 8.

Additional Notes

1 Please note that the River Itchen was the subject of an investigation and report by Arthur Telling (Barrister) and Rosemary Smith (Solicitor) on behalf of the Sports Council and Water Space Amenity Commission. They concluded -

“To sum up:

- there is an undoubted common law right of navigation over the tideway to Woodmill;



- on the balance of probabilities, there is a common law right of navigation from Woodmill to Winchester over the original course of the river:
- there is a common law right of navigation from Winchester to near Alresford either from time immemorial or by virtue of implied dedication;
- there is a statutory right of navigation over the canal”
(See THE PUBLIC RIGHT OF NAVIGATION, A Report to The Sports Council and The Water Space Amenity Commission, July 1985, Arthur Telling and Rosemary Smith, ISBN 0-906577-49-7 – page 22 & 23.)

2 Successive Government Ministers have confirmed

“As far as I am aware, the Acts of Parliament passed in 1665, 1767, 1795, 1802, 1811, 1820 and the Southampton Corporation Act 1931, are still extant.”
Mr. Denis Howell, Secretary of State for the Environment –
(See http://hansard.millbanksystems.com/written_answers/1978/nov/24/itchen-navigation#S5CV0958P0_19781124_CWA_137)

“I am advised that the Itchen Navigation is in law a navigable waterway, but that the extent of rights of access and passage along it and its towpaths is not clear.”
I am satisfied that the work currently being carried out together with the powers taken to divert the navigation and the undertakings that have been given adequately protect the public rights.”
Mr. Kenneth Carlisle, Secretary of State for Transport -
(See http://hansard.millbanksystems.com/written_answers/1992/jul/15/itchen-navigation)

3 The Environment Agency say

“The Conclusion from the Delphi study is that canoeing is, on balance, not harmful to coarse or salmonid fish populations.” –
See EA Report W266 Effects of canoeing on fish stocks and angling – 5.4. Conclusion, page 16 (http://www.freshwaterlife.org/projects/media/projects/images/4/21984_ca_object_representations_media_412_original.pdf)