

Date:20 August 2012
Our ref:



Cromwell House,
2nd Floor
15 Andover Road
Winchester
Hampshire
SO23 7BT

Dear Mr Biddulph,

Canoeing, SSSI, consistent approach particular reference to River Avon

Thank you for your e-mail expressing concerns about canoeing, SSSI and need for a consistent approach which you sent to Simon Curson on July 31st. As I mentioned in my courtesy e-mail, Simon has passed this to me as Natural England's senior officer covering Hampshire and Dorset and because I have been involved in responding to previous concerns raised by Canoe England.

I understand that your concerns have been stimulated by the situation on the River Avon and you have noted, what you believe to be inconsistencies of approach between here and elsewhere.

Before responding to each of your points it is worth me firstly reflecting on the River Avon and then giving you some background in relation to guidance to staff.

River Avon.

I understand that public right of navigation on the River Avon is claimed, but it is disputed. Natural England does not have a view on this matter.

However, we do have concerns about the potential disturbance effect of canoeing on wading birds at particular times of the year. We agree with the thrust of the last paragraph of your e-mail of July 9th 2012 to Simon, that where these concerns are significant then we should seek co-operation from local canoeing clubs to influence and guide members.

Guidance to staff and consistency

Mr East brought similar issues to our attention in October 2011 again in part stimulated by the River Avon but clearly of wider concern. Our discussions led to drafting internal guidance for staff over this issue which has not yet been cascaded as it is intended to form part of a suite of similar guidance to local advisors currently being finalised. Bearing this in mind, I am always happy to receive feedback and evidence of where you believe we are being inconsistent.

Turning to each of your points (shown in bold below).

1. The Wildlife and Countryside Act does not create any statutory powers in relation to public rights of navigation. Therefore, Natural England has no powers to extinguish a public right of navigation. A clear and unambiguous statement from Natural England is required. Such statements as, "You can't canoe here; it is an SSSI." are clearly *ultra vires*, with all the liabilities that that entails.

You are correct in stating that Natural England has no powers to extinguish a public right of navigation. I am not aware that Natural England has made such statements. Natural England has not erected

any signs to this effect on the Lower Avon. However, I am aware that fishing clubs or riparian owners may have used the SSSI designation to make such statements to others wishing to exercise a public right of navigation. When we know this is the case we have requested that they do not do so, although it seems unlikely that we have any powers to force the removal of such signs.

2. In your interpretation of section 28, you are clearly confused as to the nature of navigation rights. The owner of the soil has a private right of navigation which is in addition to but does not exclude of a public right of navigation. Under section 28 the owner would have to seek consent to permit any activity under the private right of navigation. However, the owner may not give permission to the general public to use a public right of navigation which they may do without let or hindrance. Permission being a let is not permitted. Again, a clear unambiguous statement is required, to the effect that Natural England has no powers to require the public to seek consent, by any mechanism whatsoever, before exercising their rights of navigation.

You are correct that Natural England has no powers to require the public to seek consent by any mechanism before exercising a right of navigation. Neither does the land owner / occupier need to seek our consent for navigation rights being exercised where these exist.

However, landowners / occupiers are required to notify us for consent should they wish to undertake "works" such as a hard standing or similar which may facilitate access for canoeing if such works are listed as an "Operation likely to Damage" for that SSSI.

3. The Act specifies a number of actions in relation to wildlife, which if carried out wilfully, would be criminal offences. These individual actions should be prosecuted with the utmost vigour. However, there does not appear to be any provision in the Act for a blanket ban on persons going about their lawful business on a public right of navigation. Indeed it appears that blanket restrictions may only be applied to owners. Natural England may not say canoeing is not permitted because there are waders merely on the supposition that canoeing may disturb feeding waders. In general water shallow enough for an avocet to paddle about in is too shallow for canoeing as is the water where they feed on the water. If however a canoeist were to land on the foreshore and run about screaming and waving his paddle then clearly a criminal offence would have been committed if waders were feeding. Again, a clear unambiguous statement is required, to the effect that Natural England has no powers to require the public to desist from exercising their rights of navigation on the supposition of possible disturbance to wildlife but has the duty to prosecute for wilfully engaging in specific acts at specific times and places where a breach of the provisions of the Act has actually occurred.

You are correct that where there is a public right of navigation then Natural England does not have power to require the public to desist from exercising their rights even if we believe wading birds may be disturbed. In extreme cases we do have powers to prosecute individuals for wilful damage or reckless disturbance, but we would always look for voluntary agreements as a means to protect nature conservation interests first, before resorting to prosecution.

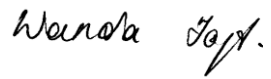
4. Given that there is no lawful way for you to prevent the public exercising their rights of navigation, Natural England should be giving information and non-mandatory advice to the public, in the manner I have previously suggested, to help the public protect and conserve wildlife. I am sure you will agree that empowering the public to assist Natural England in its statutory duties is better than high handed *ultra vires* action leading to confrontation.

As I stated at the beginning of this letter, Natural England has not made any statements in relation to the River Avon which you may consider *ultra vires*. We would be happy to discuss with local

canoeing clubs how we may work together to manage risks to wading birds in particular locations and at particular times of the year.

If there is anything I can help with further please come back to me by phone or e-mail and my details are below.

Yours sincerely,

A handwritten signature in black ink that reads "Wanda Fojt". The signature is written in a cursive style with a small flourish at the end.

Wanda Fojt

Area Manager South East Region

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