



**ENVIRONMENT AND TRANSPORT OVERVIEW AND SCRUTINY
COMMITTEE: 6 JUNE 2019**

POTENTIAL TRANSFER OF PART OF THE ASHBY CANAL

REPORT OF DIRECTOR OF ENVIRONMENT AND TRANSPORT

Purpose of report

1. To seek the views of the Committee on the potential transfer of the land associated with a section of the Ashby Canal, between Snarestone and Measham, to the Ashby Canal Association (ACA), along with the associated Transport and Works Act Order (TWAO) that grants the powers to restore the canal.

Policy Framework and Previous Decisions

2. Further to a Cabinet decision on 4 February 2003 and County Council approval on 19 May 2004, the Secretary of State for the Environment, Food and Rural Affairs approved a TWAO (Statutory Instrument 2005 No.2786) for Leicestershire County Council (LCC) to restore the Ashby Canal between Snarestone and Measham.
3. Cabinet approved the completion of the acquisition of all land required for that restoration on the 23 October 2007.

Background

4. The Council has led on the restoration of the Ashby Canal since 1994, including the purchase of land for the purpose of restoration, under the TWAO. The Council remains committed to restoration of the canal but is unable to progress as quickly as stakeholders would like, owing to lack of resources.
5. The Ashby Canal Association (a charity established in 1966 to promote the restoration of the Ashby Canal) has indicated a willingness to take on the ownership and the obligations and responsibilities under the TWAO; subject to the Department for the Environment & Rural Affairs (Defra) consent, in seeking to restore the next section of canal, between Snarestone and Measham.
6. The Council would need to apply for consent from the Secretary of State for the Environment & Rural Affairs to transfer the TWAO. Defra have outlined the process for making an application, shown in Appendix A.
7. The Council owns further sections of land to the north of the A42 between Donisthorpe and Moira, which are not being considered as part of this proposal because restoration of this section is a longer term ambition.

8. The section of canal in Measham, just north of that proposed for transfer to the ACA, has not been included due to the potential for the Council to enter into an agreement with a housing developer to construct a section of canal, and an option to develop a wharf in Measham. This area has also more recently been impacted by the proposed route of HS2. The County Council may consider making a case to HS2 Ltd for compensation or mitigation to benefit the canal restoration project. It is not known whether the case would be successful, or if multiple ownerships of canal land would have an impact on any such case.

Proposal

9. There are not considered to be any realistic alternative options to either LCC retaining ownership of the canal or transferring it to the ACA. The process DEFRA requires in order to successfully transfer the TWAO involves a consultation exercise. As such, there will be an opportunity for any other interested parties to come forward during the consultation period.
10. The ACA are currently finalising a business case to outline why the Council might consider a transfer to them. It will cover the majority of the requirements outlined by Defra, which would constitute part of the submission.
11. The proposal would involve the transfer of:-
- The section of canal and land purchased for its restoration between Snarestone and Measham up to but not including the wharf site, as shown on the plan attached at Appendix B; and,
 - The powers and responsibilities given to LCC under the TWAO. Leicestershire County Council would need to restrict the use of the land for the purposes of building a canal and using as a canal (and ancillary uses) to comply with the Council's obligations to obtain best value for any disposal of land.
12. The ACA are keen to press ahead with the transfer as soon as possible as they have raised funding and completed other preparatory work ready to build the Gilwiskaw Aqueduct, as the next major structure required for the canal's restoration. They are also keen to follow up on their recent, successful Heritage Lottery Funded project at Ilott Wharf, with a larger bid to restore the next mile of canal between the end of its currently watered section at Bridge 62 (just north of Snarestone) up to the aqueduct.

Consultation

13. A 6-week period of public consultation began on 9 May 2019 and will conclude 20 June 2019. A consultation survey is being made available on LCC's [website](#), with a paper version also available on request. The consultation has been publicised in the local press; and has been notified directly to Local Members, North West Leicestershire District Council, local parish councils, Ashby Canal Trust, Environment Agency, Natural England, the Canal & River Trust and the National Forest Company. Respondents were asked for their comments on the proposal and for any suggested alternatives for restoring this section of canal.

14. In addition, the ACA gathered views on the potential transfer in September 2018. They published a press release, which was printed in three newspapers local to Measham, other journals, on Facebook and was circulated through their own networks. In addition, visitors to the Shackerstone Family Fun Day festival were asked their views. In total, the ACA received 50 responses that supported the proposed transfer and no responses opposing.

Resource Implications

15. The Council's Estates Team advise that, due to the proposed restrictions contained in any future terms of transfer that will limit the use of the land to the canal, the value of the land proposed for transfer is £nil.
16. Transfer would alleviate the Council of its lead role in the Canal's restoration and responsibility for the maintenance of this section of the Ashby Canal. It would however, retain responsibility for those sections of the canal as set out in paragraphs 7 and 8 of this report.
17. The transfer agreement could potentially include an allocation of funding to provide interim support to the ACA in taking ownership of the identified section of the canal restoration project. The amount and terms of the funding allocation would be negotiated between the Council and the ACA and would be subject to final approval by Cabinet. Any agreed funding allocation would be met from existing budgets.

Legal issues

18. The issues relating to the transfer of the canal land and the TWAO powers are complex. Accordingly, it was considered appropriate to obtain Counsel's Opinion on the proposed process and whether there were any further requirements on Leicestershire County Council in transferring the Canal asset, in particular concerning Section 123 of the Local Government Act 1972 ("S123 LGA") and The Crichel Down Rules ("the Rules"). Local authorities have an obligation under S123 LGA to obtain best value for any disposal of land. The Rules are contained in a guidance note on compulsory purchase produced by the Ministry of Housing Communities and Local Government and they require acquiring authorities to offer to sell at market value any land acquired by compulsory purchase or under threat of compulsory purchase which has become surplus to requirement to the landowner from whom the land was originally acquired. Although it is not obligatory for local authorities to comply with these Rules it is considered best practice. Counsel advised that the proposed transfer to ACA would not contravene the best value duty in S123 LGA nor the Rules. No significant concerns or additional requirements were raised.
19. Counsel did however recommend that the restriction on use for a canal be secured by a Section 106 agreement (pursuant to the Town and Country Planning Act 1990) entered into with the ACA, to ensure that successors in title to the ACA are bound by the restriction on use.

20. Counsel also advised that the risks of a proposed transfer to ACA are that:-

- Defra refuses to give consent to the proposed transfer on the basis that either it does not have the authority under the TWAO to grant such consent or because it considers that ACA do not have the necessary resources or capacity to undertake the canal works or for any other reason;
- Leicestershire County Council would not be able to require as a condition of the proposed transfer that the canal works are undertaken (only permit them to be);
- Leicestershire County Council would lose control of the restoration of the canal process and the land needed for it after the proposed transfer takes place but to balance this, the County Council would not have the obligations and liabilities; and,
- ACA, as the undertaker after the proposed transfer, would have the power to make byelaws which could prohibit or restrict use of the canal or make charges, although these would be subject to Secretary of State's confirmation.

21. To protect the Council from future claims arising as a result of the works undertaken after the proposed transfer, the ACA would be required to provide an appropriate level of insurance, such as Public Liability, so that they become fully responsible for the land in its current state and any sections that they restore to canal.

22. The Director of Law and Governance has been consulted on this report.

Timetable for Decisions

23. A report will be submitted to Cabinet on 13 September 2019, detailing the results of the consultation and to seek a final decision on whether to formally apply to the Secretary of State for the Environment, Food and Rural Affairs and then (if successful) to make the transfer of the land and associated TWAO, as set out in the report.

Background papers

24. None.

Circulation under the Local Issues Alert Procedure

25. Mr. D. Harrison CC, Ibstock & Appleby and Mr. S. Sheahan CC, Forest & Measham.

Equality and Human Rights Implications

26. There are no significant equality or human rights implications directly arising from this report. An Equality and Human Rights Impact Assessment (EHRIA) screening exercise has been completed and concluded that a full impact assessment was not required.

Appendices

Appendix A - Defra requirements for an application to transfer the TWAO

Appendix B - Map of the proposed section of the Ashby Canal route for transfer

Appendix C - Further background information

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