

CABINET – 13 SEPTEMBER 2019

POTENTIAL TRANSFER OF PART OF THE ASHBY CANAL

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to seek the Cabinet's approval to apply to the Secretary of State for the Environment, Food and Rural Affairs for consent to transfer powers granted to the County Council under a Transport and Works Act Order 2005 (TWAO) to the Ashby Canal Association (ACA). Subject to this consent being granted, the Cabinet are also asked to approve the transfer of land associated with a section of the Ashby Canal, between Snarestone and Measham to the ACA.

Recommendations

2. It is recommended that:-
 - a) the Council applies to the Secretary of State for the Environment, Food and Rural Affairs for consent to transfer powers under the Transport and Works Act Order 2005 (TWAO) to the Ashby Canal Association (ACA);
 - b) the Director of Environment & Transport, in consultation with the Director of Law & Governance, be delegated authority to negotiate and agree detailed terms and conditions related to the transfer of the ownership of land associated with a section of the Ashby Canal between Snarestone and Measham to the ACA (shown on the map in Appendix A).
 - c) subject to a) and b) above, that the ownership of land associated with a section of the Ashby Canal between Snarestone and Measham and the powers under the TWAO are transferred to the ACA.
 - d) That the Director of Environment and Transport, if she considers it to be appropriate, agrees an allocation of funding to provide interim support to the ACA in taking ownership of the identified section of the canal restoration project.

Reason for Recommendation

3. The Council has led on the restoration of the Ashby Canal since 1994, including the compulsory 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 and necessary funding.

4. The Ashby Canal Association has indicated a willingness to take on the ownership and the obligations and responsibilities under the TWAO, subject to Secretary of State consent, in seeking to restore the next section of canal, between Snarestone and Measham.
5. The land proposed for transfer ends near the centre of Measham. The next section of canal in Measham, just north of that proposed for transfer to the ACA, is highly complicated due to a potential agreement with a housing developer to construct a section of canal and an option to develop a wharf. This area has also more recently been impacted by the proposed route of HS2, so it is not proposed for transfer at this stage but may be considered in future. The County Council is currently 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.
6. The Council owns further sections of canal to the north of the A42 between Donisthorpe and Moira. These are not being considered as part of this proposal because restoration of this section is a longer term ambition.

Timetable for Decisions (including Scrutiny)

7. As part of the consultation process, the Environment and Transport Overview and Scrutiny Committee was consulted on 6 June 2019 and raised no significant concerns.
8. If approved by Cabinet, a formal application would be made to the Secretary of State for consent to transfer the TWAO as soon as reasonably possible.
9. If approved by the Secretary of State (the timescale for which is not specified), detailed terms and conditions would be agreed with the ACA, (with authority delegated to the Director of Environment & Transport) and the transfer completed.

Policy Framework and Previous Decisions

10. 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 to restore the Ashby Canal between Snarestone and Measham.
11. Cabinet approved the completion of the acquisition of land required for that restoration on the 23 October 2007.

Resource Implications

12. 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 a canal, the value of the land proposed for transfer is £nil.

13. The transfer of the land and the TWAO powers would transfer the lead role in the Canal's restoration and the responsibility for the maintenance of this section of the Ashby Canal from the Council to the ACA. The Council would, however, retain responsibility for the line of the canal to the north of this section (i.e. the proposed Measham Wharf area and the watered section of canal from Donisthorpe to Moira).
14. Subject to Cabinet approval, alongside the transfer agreement the Director of Environment and Transport may agree an allocation of funding to provide interim support to the ACA in taking ownership of the identified section of the canal restoration project. Any agreed funding would be met from existing allocations regarding the Ashby Canal.

Circulation under the Local Issues Alert Procedure

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PART B

Background

16. Since 1994, the Council has led on the restoration of the Ashby Canal, which was closed in 1966 due to mining subsidence. The last significant section (500m) was restored in 2014/15 from Snarestone to the new Bridge 62. This cost £1.1m and was funded from a section 106 contribution from the Minorca open cast mine.
17. The Council has taken entry on all the necessary land and has completed the purchase of the line of the canal from Snarestone to Measham, using powers granted by the Transport and Works Act Order, on all but two small parcels of land. It is expected that these will be concluded shortly, so should not affect the transfer timetable proposed.
18. The restoration has, to date, been substantially funded from third party sources. With limited capital remaining or further sources of funding, the Council has limited capacity to invest in the project but has come under increasing pressure from stakeholders to do more.
19. The ACA are a Registered Charity and a Company Limited by Guarantee, established in 1966 to promote the restoration of the Ashby Canal. The ACA currently have around 500 members and have recently completed a £10,000 Heritage Lottery Fund (HLF) project to explore and engage local people with the archaeology of Ilott Wharf, on the route of the canal. They have also raised over £100,000 in donations to restore the Gilwiskaw Aqueduct (a planned structure north of Bridge 62, needed to enable the canal passage across the Gilwiskaw Brook).
20. The ACA has indicated a willingness and capability to take on the ownership and the obligations and responsibilities under the TWAO, subject to Secretary of State consent, in seeking to restore the next section of canal, between Snarestone and Measham.
21. It is considered that the ACA, as a charity with the sole purpose of restoring and promoting the canal, might be better placed than the Council to secure further funding for the canal's ongoing restoration.

Options

22. The option to grant a licence to stakeholders to build the Gilwiskaw Aqueduct as the next phase of the canal restoration was considered and briefly pursued. However, stakeholders indicated that their preference was for the Council to transfer the land and the associated powers under the TWAO.
23. There are not considered to be any realistic alternative options to either the Council retaining ownership of the canal or transferring it to the ACA. A recent consultation exercise sought views on this, as summarised later in this report.

Legal issues

24. 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 the 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").
25. 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. This is because the value of the land is nil and the purpose of transfer is restricted to that of building a canal, which is the purpose for which the Council purchased it under the TWAO. No significant concerns or additional requirements were raised.
26. In addition to the restriction on the use of the land to be contained within the Transfer, Counsel, as a general observation, suggested that the restriction on use for a canal also be secured by a Section 106 agreement pursuant to the Town and Country Planning Act 1990 to ensure that successors in title are bound by the restriction on use.
27. The risks of a proposed transfer to ACA are that:
 - The Secretary of State 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;
 - The 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);
 - The 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 LCC 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.

28. 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.
29. The Director of Law and Governance has been consulted on this report.

Consultation

30. Defra stipulated that details of appropriate public consultation should be supplied in applying to the Secretary of State for consent to transfer powers under the TWAO.
31. A six-week period of public consultation was carried out between 9 May and 20 June 2019 and in summary, the responses were as follows:
- There were 143 responses in total
 - In giving views on the statement: “Leicestershire County Council should apply to Government to transfer to the Ashby Canal Association the land and powers, acquired under the Transport and Works Act, to restore the Ashby Canal from Snarestone to Measham”:
 - 95% Strongly agreed (136)
 - 3% Tended to agree (4)
 - 1% Neither agreed nor disagreed (1)
 - 1% Strongly disagreed (2)
 - In response to the question: “Do you have any alternative suggestions you believe the county council should pursue? to deliver the restoration of the Ashby Canal from Snarestone to Measham?”:
 - 8% said Yes (11)
 - 92% said No (129)
32. The only entirely alternative suggestion was that the Council should continue to take the lead role in restoring the canal as a long-term commitment.
33. The majority of the alternative suggestions for restoring this section of canal could continue to be explored after transfer to the ACA. These included:
- Seeking funding from HS2: which the Council are already seeking to do
 - Transfer to a partnership of organisations working alongside ACA: no other partners have come forward to express any interest in taking on the canal. The ACA already work closely with others, such as the Ashby Canal Trust, District Councils, the Canal and River Trust and the Inland Waterways Association.
 - Involving community members more: it is hoped that transfer to the ACA as a community organisation will enable more of the community to get involved.
34. On the basis of the results of the consultation, it is concluded that the proposal to seek to transfer the TWAO to the ACA is progressed.

Equality and Human Rights Implications

35. 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.

Background Papers

36. Report to Cabinet: 4 February 2003 – Ashby Canal Restoration Snarestone to Measham – Proposed Transport and Works Act Order -
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=856&Ver=4>
37. Report to County Council: 19 May 2004 – First Report of the Cabinet – Ashby Canal Project -
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=134&MId=1064&Ver=4>
38. Report to Cabinet: 23 October 2007 – Proposals for restoration of the Ashby Canal from Snarestone to Measham
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=1896&Ver=4>
39. Report to Environment and Transport Overview and Scrutiny Committee: 6 June 2019 – Potential Transfer of Part of the Ashby Canal -
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1044&MId=5704&Ver=4>

Appendices

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

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