

Report to the Basingstoke Canal Joint Management Committee

Re: Voting Rights and the Constitution of the JMC

Background

- The constitution of the JMC was agreed in March 1991, and it was agreed (by 11 votes to 9) that the two non-local authority representatives (Surrey & Hampshire Canal Society and English Nature) should be entitled to vote.
- However, a conflict between the Canal Society and English Nature having voting rights and the legal framework under which joint management committees operate has since been noted.
- The joint committee was set up under the auspices of the Local Government Act 1972, and it may include members who are not members of the committee's appointing authorities. However, in relation to joint management committees the Local Government and Housing Act 1989 operates to prevent non-authority members from having voting rights. Because of this, the ruling of the JMC in March 1991 was ineffective.
- As discussed with the JMC on 18 March 2005, if it were possible at this stage for the Secretary of State to grant an exemption to the statutory bar that prevents the Canal Society and English Nature from voting on the JMC, Hampshire County Council have indicated that granting voting rights to these parties would affect the VAT status of the body and would create a liability of c. £200,000 for retrospective VAT liability (which would also remain ongoing for future years).
- The County Councils have been asked to consider whether an alternative constitutional model for the JMC could be arranged to allow the effective granting of voting rights to the Canal Society and English Nature.

Current Position

- In terms of seeking an exemption, my view is that there is no evidence the Secretary of State would grant an exemption to the statutory framework given:
 - the length of time that has elapsed since the original decision of the JMC in 1991
 - that the Secretary of State would have to consider whether the consequences of granting an exemption would be in the public interest, taking into account the VAT liability of c. £200,000 arising on the local authority
- Whilst the JMC retains management responsibilities, the legal framework of the 1972 and 1989 Acts will still remain applicable.

- The Local Government Act 2003 permits local authorities to do anything which promotes the social, economic and environmental well-being of their area. However, these well-being powers are limited by any other prohibition or limitation contained elsewhere in statute. Therefore, the well being powers of the 2003 Act could not be used to overcome the statutory restrictions contained in the 1972 and 1989 Acts (see above) which prevent English Nature and the Canal Society from having voting rights on the JMC.

Summary

For the reasons outlined above, I am currently unable to make any recommendations which would overcome the relevant statutory bar preventing the effective granting of voting rights to English Nature and the Canal Society on the JMC.

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