



EXETER SHIP CANAL – RIGHT OF NAVIGATION

Introduction

This paper is principally concerned with the Exeter Ship Canal and whether the public right of navigation established by the 1829 Act (known as the “Canal Extension Act 1829”) is still in force today. It looks first at the clauses in the 1829 Act which established the right of navigation on the canal and then examines the implications of the Transport Act 1968 which included clauses to (i) remove the right of navigation on canals managed at that time by the British Waterways Board (now Canal & River Trust (CRT)) and (ii) to enable an order to be made removing the right of navigation on other canals. This leads to some general conclusions on the right of navigation today on canals that are not managed by CRT, including the Exeter Ship Canal.

The principal references are as follows:

- The Canal Extension Act 1829 and in particular Clauses II, III and LV;
- The Transport Act 1968, sections 105 and 112; and
- The Guidance Note issued by the National Association of Boat Owners (NABO) in May 2004.

The paper covers the right of navigation on canals and does not cover the right of navigation on rivers, which is a separate and distinct subject on which, coincidentally, the NABO guidance note provides some helpful analysis.

My thanks are due to Tom Epton, retired lawyer and author of “Topsham Lock, the Lower Sluice & The Back Gut” first published in 2023 (ISBN 978-1-3999-5150-0) and Neil Edwards, a former Chief Executive of the Inland Waterways Association, for their assistance with my research on this subject.

Exeter Ship Canal

The Act of Parliament that governs the Exeter Ship Canal is the Canal Extension Act 1829, the purpose of which is to alter, extend and improve the Exeter Canal.

Relevant excerpts from the Act are as follows:

- Clause LV (which has a marginal note “Navigation to be free on Payment of the Rates”)
“And be it further Enacted, That all and every Person and Persons shall have free liberty to use, with Horses, Cattle, and Carriages, the private Ways and Roads ... for the conveying of Goods and other Things to and from the said Canal ... and also with Ships, Vessels, and other Craft to navigate, pass upon, and use the said Canal, for the Purpose of conveying any Goods, Wares, Merchandize, and Things whatsoever thereon and also to use ... and the said Towing Paths for hauling and drawing of such Boats, Barges, and other vessels, upon Payment of such Rates for the same as aforesaid; (*i.e. Tolls, Rates, Distress Charges*) subject nevertheless to the Rules, Orders, Bye Laws, and Regulations which shall from Time to Time be made by the said Mayor, Bailiffs, and Commonalty, the Proprietors by virtue of this Act.”
- Clause III states that after completion of Topsham Lock then:
“It shall be lawful for all persons, with such Ships, Vessels, Barges, Boats, Craft, and all Goods waterborne as aforesaid, to pass at all Times ... and to navigate and use the said Canal ... in as ample and complete a Manner, and upon Payment of the same Tolls, and subject to the same Regulations as by this Act provided...”
- Clause II includes a reference to the Council authorised and required “to open and keep navigable and passable for Boats, Barges and other Vessels the said Canal so lately extended ... “

It seems clear from the above that the Canal Extension Act 1829 established a right of navigation on the canal for its full length from Turf Lock to Exeter and that, unless the Act has been amended in this regard, the right of navigation

continues to this day as originally enacted.

Transport Act 1968

The Transport Act 1968 came into effect on 1 January 1969 and at a stroke removed the public and private rights of navigation from canals managed by the British Waterways Board (now CRT). Today, CRT manages c. 2,000 miles of waterways (both canals and rivers) in England and Wales, whereas Exeter City Council owns and manages the 5.2 mile Exeter Ship Canal.

- Section 105 (5) of the Act states that:

“Section 17 of the Regulation of Railways Act 1873 (which requires the Board to maintain certain inland waterways) shall cease to apply to any inland waterway which on the date on which this section comes into force is comprised in the undertaking of the Board; and any local enactment passed with respect to any such inland waterway, so far as that enactment

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- (a) confers any public or private right of navigation over the waterway; or
 - (b) imposes any duty to maintain that waterway for the purpose of navigation (including any duty to supply, or maintain a supply of, water for the waterway for that purpose)
- shall cease to have effect.”

It is thus clear that the right of navigation on the canals the management of which was transferred to the British Waterways Board (now CRT) by virtue of the Transport Act 1968 no longer exists.

- Section 105 (6) of the Act states that:

“If the Board or Canal & River Trust acquire any inland waterway after the date on which this section comes into force any local enactment passed with respect thereto shall, so far as it confers or imposes any such right or duty as is mentioned in paragraph (a) or (b) of subsection (5) of this section, cease to have effect on the date on which the waterway is acquired.”

Thus waterways that have been acquired by the British Waterways Board or CRT on or after 1 January

1969, to the extent that there was an existing right of navigation, will have lost that right of navigation from the date of the ownership change.

If follows from this that any canals transferred from the British Waterways Board or CRT after 1 January 1969 to a third party no longer have a right of navigation unless, exceptionally, the third party has, following acquisition, taken steps to reinstate the right of navigation.

- Section 112 of the Act states as follows:

Subsection (1) In the case of any canal which is not comprised in the undertaking of the Waterways Board or Canal & River Trust, the Minister, or, in the case of a canal in Scotland, the Scottish Ministers, may by order direct all or any of the following, that is to say –

- (a) that any local enactment passed with respect to that canal shall cease to have effect so far as it confers any public or private right of navigation over that canal;
- (b) that any such enactment shall cease to have effect so far as it imposes any duty to maintain that canal for the purpose of navigation (including any duty to supply, or maintain a supply of, water for the canal for that purpose);
- (c) that section 17 of the Regulation of Railways Act 1873 if applicable to that canal, shall cease to apply to it.

Subsections (2),(3) (4) and (5) make further provisions (not detailed here), and sub-section (6) states that in this section (i.e. section 112) “canal” includes any navigation which has been made under, or in respect of which tolls may be levied by virtue of, any enactment, and references to a canal include references to part of a canal.’

Despite extensive searches on the internet and reference to relevant waterways books no evidence has been discovered that any orders under s112 Transport Act 1968 have been made. Whilst this is not conclusive, it nevertheless allows a conclusion to be drawn that it is highly unlikely that an order under the Transport Act 1968 to extinguish the right of navigation on any canal that is not managed by the Board (CRT) has ever been made.

Thus it can be asserted with a high degree of confidence that the public right of navigation established for the Exeter Ship Canal by the Canal Extension Act 1829 is still in force today.

Implications for other canals

The NABO Guidance Note makes it clear that, with the exception of the Derby Canal, the Acts establishing canals all included clauses enshrining the right of navigation. As stated above, canals acquired by the Board or CRT since 1 January 1969, to the extent that there was an existing right of navigation, will have lost that right on the date of acquisition. This includes, for example:

- The Southern Stratford canal (acquired by the Board from The National Trust on 1 April 1988)
- The Rochdale Canal from Castlefield Junction to Ducie Street Junction (acquired by CRT from The Waterways Trust on 26 July 2012)

Similarly canals, or parts thereof, transferred from the Board (CRT) to third parties after 1 January 1969 would have been transferred without any right of navigation. This includes, for example:

- The Grand Western Canal from Lowdwells to Tiverton Basin (transferred from the Board to Devon County Council on 24 June 1971)
- The Cromford Canal from Cromford to Ambergate (transferred from the Board to Derby County Council in June 1974)
- The Chesterfield Canal from Chesterfield to Mill Green, Staveley (transferred from the Board to Derby County Council in 1988)

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