



AC-2023-LON-003206

AC-2023-LON-003206

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT

B E T W E E N: -

THE KING (on the application of WILD JUSTICE)

Claimant  
\_\_\_\_\_

-and-

SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Defendant  
\_\_\_\_\_

NATURAL ENGLAND

Interested Party

CONSENT ORDER

---

UPON the Claimant's claim for judicial review dated 27 October 2023 (the "Claim") challenging the decision to grant twenty-eight licences for the release of gamebirds in or within 500 metres of the Deben Estuary Special Protection Area and the Breckland Special Protection Area ("the licences")

AND UPON the Claimant filing its Amended Statement of Facts and Grounds on 28 February 2024

AND UPON the parties agreeing the Statement of Reasons attached hereto as Annex A, as part of which the Defendant conceded the Claimant's claim for judicial review on the grounds identified therein, and in particular conceded that the granting of the licences was unlawful

AND UPON the parties agreeing, for the purposes of CPR Part 31.22(1)(c) that certain documents, identified by the Claimant's representatives in correspondence, dated 5 April 2024, disclosed in this claim may be used outside of these proceedings

IT IS ORDERED BY CONSENT THAT:

- 1 The Claim is withdrawn.
- 2 The Defendant shall pay the Claimant the sum of £35,000 in respect of costs, within 14 days of this Order.

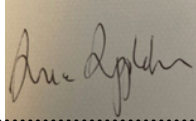
Signed: .....

..... (solicitor for the Claimant)

Dated: .....9 April 2024.....

Signed: ...*For the Treasury Solicitor*... (solicitor for the Defendant)

Dated: .....11 April 2024.....



Signed: ..... (solicitor for the Interested Party) Dated: .....  
11.4.24.....

Service of this order

The Court has provided a sealed copy of this Order to the serving party:

Government Legal Department

102 Petty France

Westminster, London

SW1H 9GL

Approved by ACO Lawyer [REDACTED], pursuant to CPR Part 54.1A

## ANNEX A: STATEMENT OF REASONS

1. The Claimant is a not-for-profit company set up to advocate on behalf of wildlife to further nature conservation in the UK. It also seeks to encourage public participation in nature conservation issues, and to ensure that UK laws, policies and practices protect wildlife.
2. On various dates in June, July and August 2023 the Secretary of State for the Environment, Food and Rural Affairs (then the Right Honorable Therese Coffey MP) or Lord Benyon acting on her behalf issued licences for the release of gamebirds in or within 500 metres of Special Protection Areas (“SPAs”). This judicial review concerned the legality of twenty-eight licences: twenty-seven relating to the Breckland SPA and one relating to the Deben Estuary SPA (“the decisions”).
3. The Claimant alleged that the decisions were unlawful on three grounds.

### *Ground One*

4. Under ground one, the Claimant alleged that the decisions had been taken in breach of the Habitats Regulations. In particular, there were no cogent reasons to depart from the judgment of Natural England that the licences should not be granted or should be granted with particular conditions.
5. The Habitats Directive was transposed into domestic law by the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”).
6. The Competent Authority (which is the Secretary of State), under Regulation 63 of the Habitats Regulations, before giving consent to a “*plan or project*” which is likely to have a significant effect on a European Site which is not directly connected with or necessary to the management of the site, must make an “Appropriate Assessment” of the implications of the plan or project for the site in view of the European Site’s conservation objectives.
7. Under Regulation 63(3) the Competent Authority must for the purposes of the assessment consult the Appropriate Nature Conservation Body and have regard to representations made by that body. The Appropriate Nature Conservation Body is Natural England.
8. The Claimant relied on *Wyatt v Fareham Borough Council* [2023] EWCA Civ 983, for the proposition that – in respect of the relevant licensing decisions – the Defendant unlawfully failed to give “*significant weight*” to the advice of NE as and/or provide “*cogent reasons*” for departing from such advice from the Appropriate Nature Conservation Body (ASFG §5, 65, 68; paragraph 9(4) of *Wyatt*) as required by Regulation 63(3) of the Habitats Regulations. Additionally or alternatively, the Claimant alleged that the Defendant unlawfully failed to address the statutory test in Regulation 63(5) of the Habitats Regulations in its reasons or misdirected itself as to the statutory test by failing to be satisfied that “*there is no reasonable doubt that it will not adversely affect the integrity of*

*the European site*” (see ASFG §8, 23 68, *Wyatt* at paragraph 9(7)), in the further alternative that even if the statutory test in Regulation 63 had been set out, the Defendant did so without sufficient evidence to support a positive conclusion being before the decision-maker (ASFG §69-71).

8.1. In relation to the Deben Estuary SPA, Natural England recommended that the licence be refused. The Secretary of State granted the licence.

8.2. In relation to the Breckland SPA, in the majority of cases Natural England recommended that licences could be granted but should be delayed until at least 1 September 2023 (in relation to locations where release pens form part of the Woodlark habitat) and 1 October 2023 (in relation to locations where the release pens form part of the Stone Curlew habitat). The licences were granted not on the terms recommended by Natural England.

9. The Defendant accepts that, as the Competent Authority, its reasons did not meet the standard of “*cogent reasons*” required of an Appropriate Assessment when addressing the statutory test in Regulation 63 and departing from the advice given by the Natural England, and that accordingly the grant of the licences were unlawful. The reasons given did not allow the Competent Authority to be satisfied that “*there is no reasonable doubt as to the absence of the adverse effects on the integrity*” (*Wyatt*) of the European Site concerned as required by Regulation 63 of the Habitats Regulations.

10. It follows that Ground 1 of this claim is conceded. All of the relevant decisions under challenge (for the avoidance of doubt these are 27 individual licences in respect to the Breckland SPA and one licence relating to the Deben Estuary SPA) are conceded to be unlawful on the basis of Ground 1 of the Claimant’s challenge.

### *Ground Two*

11. By ground 2, the Claimant alleged that there was no assessment which complied with Regulation 63 of the Habitat Regulations (which requires an “appropriate assessment”) to be carried out. The Claimant alleged that none of the evidence showed an assessment had been carried out.

The Defendant concedes ground 2 to the extent that it accepts that <sup>12.</sup>the assessment which it alleges took place is not compliant with the requirements of the statutory scheme in Regulation 63 of the Habitats Regulations (as set out in *Wyatt*, see above).

13. The Claimant contends that there was in fact no assessment (“*there is no evidence of any appropriate assessment being carried out in relation to the licences under challenge in these proceedings*” (ASFG §73)). The Secretary of State does not concede that there was no assessment. That issue does not require to be determined in light of the concession on Ground 1, as regards the absence of cogent reasons.

### *Ground Three*

14. By ground 3, the Claimant alleged that the decisions were “*tainted by the appearance of bias*” (ASFG §76) contrary to the principles set out in *Porter v Magill* [2002] 2 AC 357.

15. The Defendant strongly disputes this ground of challenge and it is accordingly not conceded. The Defendant’s position is that no impression of bias arose from the relevant decision-making.