[xx] March 2022

PRESS SUMMARY

The Queen (on the application of Tarian Hafren Severn Shield CYF) and Marine Management Organisation and NNB Generation Company (HPC Limited) [2022] EWHC 683 (Admin)

High Court of Justice: Mr Justice Holgate

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the court is the only authoritative document. It is published at www.judiciary.uk/judgments. References to paragraphs in the judgment appear in square brackets.

Outcome:

The claim for judicial review is dismissed.

Overview

The application for judicial review concerned a challenge to a variation to a marine licence approved under the Marine and Coastal Act 2009 ("MCAA 2009"). The main issue was whether the power to vary a marine licence under the MCAA 2009 can be used to authorise an "activity" not already included within the licence of which variation is being sought.

***Factual background* [2] – [36]**

This section gives a chronological account of the events leading up to the challenge brought by the claimant and a summary of the project.

NNB Generation Company (HPC) Limited applied for an development consent order ("DCO") in October 2011 under the Planning Act 2008 to build Hinkley Point C Power station as a "nationally significant infrastructure project". This was granted by the Secretary of State in March 2013. The DCO came into force on 9 April 2013.

HPC applied to the Marine Management Organisation ("MMO") for a marine licence to carry out relevant marine works directly related to the project. The MMO granted the licence in June 2013, with a further licence granted by Natural Resource Wales in July 2014 to allow for disposal of dredged material at the Cardiff Grounds licensed disposal site.

Five variations to the original licence were granted by the MMO in 2014, 2016, 2017 and 2019.

The works authorised by the licence included *dredging* in the Severn Estuary necessary for engineering works in connection with the circuit which will use water from the Severn to provide cooling for the turbines.

HPC submitted an application for a sixth variation in December 2020. This included the *disposal* of dredged material at a different designated disposal site in the Estuary, at Portishead. The MMO approved the licence variation on 2 August 2021.

The licence only allows dredging and disposal to be carried out during certain weather windows. During the 2021 window HPC was able to complete the dredging and disposal necessary for certain engineering works, but not the works themselves. Over the winter silt has built up. HPC now wish during the 2022 window to dredge and dispose of the silt which has accumulated over the winter and to complete those engineering works.

The issues in the case

The claimant withdrew its challenge under ground 3 to the Habitats Regulations Assessment **[39]**. At **[38]** the judgment summarises the four remaining grounds of challenge: **1, 2, 4 and 5.**

Originally the claimant asked the court to quash the whole of the decision varying the licence made in August 2021. But at the hearing it asked the court to quash only that part of the decision which authorises *disposal* of dredged material in the Severn at Portishead **[42]-[43]**.

The judgment makes it clear that the claimant has not brought any challenge to the MMO's assessment that the material to be dredged and disposed of is non-radioactive **[44]**.

The statutory framework **[46] – [65]**

The judgment summaries the relevant parts of the legislation applicable, in particular the Marine and Coastal Access Act 2009.

Ground 1 **[66] – [116]**

The claimant argued that the August 2021 decision to vary the marine licence was unlawful because it fell outside the powers of the MMO under the MCAA 2009. The claimant submitted that because the marine licence and subsequent variations only authorised *dredging*, the MMO's power to vary the licence could not be used to add the *disposal* of that dredged material as a wholly new activity.

The court held that the power to vary a licence can properly be used to introduce a new activity provided that it can properly be said to represent a variation of the existing licence in its current form. That depends upon such matters as the nature of the project, the terms of the licence, the nature and extent of the activities already authorised and of the new activity. It is also appropriate to consider the relationship between these matters and any other relevant consents. Here it was a condition of the DCO and of the existing marine licence that dredged material be disposed of in the Severn Estuary in order to maintain the sediment balance within the Severn Special Area of Conservation.

The court held that the alternation to the licence did not go beyond the ambit of what could lawfully be considered under the MMO's power to vary a licence. Ground 1 was rejected.

Ground 2 **[117] – [138]**

The claimant pointed out that the defendant's power under s.72(3)(d) MCAA 2009 cannot lawfully be exercised unless there is a reason to exercise the power which appears to the MMO to be relevant. The claimant then submitted that the mere content of a licensee's proposal to vary a licence cannot constitute a lawful reason to exercise this power.

The court disagreed. The judgment explains that Parliament has conferred a broad power on the MMO in terms of the reasons upon which it may act. There is no legal justification for giving the MMO's power the restricted interpretation for which the claimant contended. The court held that the defendant lawfully considered the variation of the licence for relevant reasons, and so ground 2 was rejected.

Ground 3 **[39]**

As explained above, the claimant decided not to pursue this ground.

Ground 4 **[139] – [151]**

The claimant contended that the defendant failed to comply with regulation 22 of the Waste (England and Wales) Regulation 2022, specifically that they failed to apply the waste hierarchy in Article 4(1) of the Waste Framework Directive. This places disposal at the bottom of the hierarchy.

The court rejected the claimant's submission that the conditions of the DCO and marine licence did not require disposal of the dredged material into the Severn. They clearly did so in order to maintain the sediment balance of the Severn, rather than allowing the material to put to a terrestrial use, such as landscaping. The Court rejected the claimant's contention that the MMO had failed to apply the South West Marine Plan. Indeed, the Plan treats the return of this dredged material to the Severn in order to maintain its sediment budget as compliant with the waste hierarchy. The court held that there was no merit in the legal complaints advanced by the claimant and therefore rejected this ground of the claim.

Ground 5 **[152] – [178]**

The claimant contended that the defendant failed to comply with the Water Framework Directive, namely that the defendant failed to consider whether the disposal would jeopardise the attainment of "good surface water status" in the Lower Severn.

The claimant did not challenge the defendant's handling of the first objective of Article 4(1)(a), namely that the disposal of dredged material would not cause a deterioration in water quality. But it submitted that the defendant failed to consider the requirement that the disposal should not "jeopardise" the attainment of "good water chemical status". This was rejected by the court as involving a misreading of Article 4(1)(a) and relevant case law. The proposal had been assessed as causing no harm to water quality and the claimant had not identified any legal source for requiring such a proposal to include steps for improving water quality. There was no basis for the claimant to assert that the proposal would jeopardise achieving a "good" status in the Lower Severn. The court also accepted the defendant's analysis of the relevant documents which revealed no legal foundation for the criticisms advanced by the claimant Ground 5 was rejected