

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

CLAIM NO: AC-2025-LON-004708

BEFORE SIR PETER LANE

BETWEEN:

THE KING
(On the application of
STAUNCH CAMPAIGN LIMITED)

Claimant

-and-

NORTH NORTHAMPTONSHIRE COUNCIL

Defendant

-and-

I.M. PROPERTIES DEVELOPMENT LIMITED

Interested Party

PERMISSION TO APPEAL

References to the draft judgment are as follows “J/paragraph number” and to the bundles are as follows Core Hearing Bundle, Supplementary Hearing Bundle B and C are expressed as [CB/Y/§Z], [SBB/Y/§Z], or [SBC/Y/§Z] where Y is the page number, and Z is the paragraph number. The abbreviations set out in the Claimant’s skeleton are adopted.

INTRODUCTION

1. The Claimant (“STAUNCH”) seeks permission to appeal the order which will be made by Sir Peter Lane (“the Learned Judge”), dismissing its claim for judicial review, for the reasons set out in his draft judgment, of the decision (“the Decision”) [CB/2/A170-191] of the Defendant (“the Council”), made on 21 November 2025, to approve Planning Application Ref. NE/22/00698/OUT (“the Application”) and permit 185,000m² of Class B8 warehousing (“the Development”) on 60 hectares of greenfield land between the village of Titchmarsh and the settlement of Thrapston (“the Site”).
2. The Grounds of Appeal are:

- a. **Ground 1:** The Learned Judge erred in law in his approach to Ground 2 by:
- i. Unlawfully entering the forbidden territory of planning merits in determining that had the Defendant known about the unauthorised burning and burying of waste (where there is no dispute that neither the officer, nor the Interested Party, nor their advisors, nor Natural England, were aware of the activities), then it would still have concluded that the proposed replacement Functionally Linked Land (FLL) was effective mitigation (J/100); and/or
 - ii. Determining that the impacts of the activities on the suitability of the site as mitigation could be addressed at a later stage, as part of the detailed mitigation strategy/discharge of the Section 106 Agreement, in circumstances where the Competent Authority is required to be satisfied, beyond reasonable scientific doubt, at the time of deciding to authorise the project (i.e. at the date of the Decision) and these activities give rise to reasonable scientific doubt as to the suitability of the proposed replacement FLL.
- b. **Ground 2:** The Learned Judge erred in his approach to Ground 4 (in-combination effects) by:
- i. Failing to appreciate, as did the Defendant, that on the facts of this particular case, where two adjacent developments were proposed, each with its own proposed replacement FLL as mitigation, the lawful consideration of in-combination effects necessarily entailed addressing the possibility that the development of one of those developments (here the IM Properties proposal) might impede the effectiveness of the mitigation determined to be necessary for the other (here, the Castle Manor Farm) through causing noise and disturbance; and/or
 - ii. Unlawfully entering the forbidden territory of planning merits, in determining that, had the Defendant addressed the possibility of the

development in issue impacting the effectiveness of the proposed mitigation for Castle Manor Farm¹, then it would still have concluded that the replacement FLL was effective mitigation; and/or

- iii. Determining that the impacts of the development in issue on the effectiveness of the proposed mitigation for Castle Manor Farm could be addressed at a later stage, for example, as part of the discharge of a planning condition dealing with boundary treatment (J/133), in circumstances where the Competent Authority is required to be satisfied, beyond reasonable scientific doubt, at the time of deciding to authorise the project (i.e. at the date of the Decision) and this gives rise to reasonable scientific doubt as to the suitability of the proposed replacement FLL.

GROUND 1: The Learned Judge erred in his approach to Ground 2 (unauthorised dumping and burning of waste).

3. The Learned Judge found that “there is sufficient evidence before the Court to indicate that, for the purposes of these proceedings, burning and - more pertinently – burying of waste has occurred at the sites identified by the Claimant” (J/100) (and that finding is not challenged).
4. It is not in dispute that, at the time of taking the Decision:
 - a. The Officer with delegated authority, along with Middlemarch, the Interested Party, and Place Services, did not know that the unauthorised burning and burying of waste (“Unauthorised Activities”) were occurring adjacent to the proposed replacement FLL;

¹ Especially in circumstances in which Natural England nowhere addressed such effects and offered no advice that could be relied upon by either the Defendant or the Interested Party, which is in stark contrast with the Learned Judge’s findings in relation to Natural England’s knowledge of other matters and advice to the Defendant and Interested Party.

- b. No investigations had, at that critical point in time (or at all), been undertaken to assess whether the Unauthorised Activities had impacted the suitability of the proposed replacement FLL for Lapwing and Golden Plover, notwithstanding that:
 - i. Natural England's criteria for suitability of any replacement habitat, and the SPA SPD, both required that the replacement FLL should be free from disturbance [SBB/B701]; [SBC/C1157]; and
 - ii. Ms Fox accepted that, given the "freely draining, lime rich loamy soils" and the incline towards the east, the Unauthorised Activities "could result in some level of contamination" and "could potentially impact the FLL Mitigation Area" (and her evidence is addressed further below) [CB/A257-258/§14];
 - c. Given the Defendant as Competent Authority, its expert advisor, the Interested Party, and its expert advisor, did not know that the Unauthorised Activities were occurring, Natural England did not (and could not) know that it was occurring either (which, as with fn1 above, is in stark contrast with the Learned Judge's findings in relation to Natural England's knowledge of other matters and advice to the Defendant and Interested Party (J/7-10, 13-14, 75-77)).
5. There is, therefore, no suggestion (nor could there be) that Natural England considered the impact of those activities on the suitability of the proposed replacement FLL, let alone advised on that issue; or that the Defendant (or its expert advisor) could even assess the impact of those activities on the suitability of the proposed replacement FLL, let alone take that into account in discharging its obligations under the Habitats Regulations 2017.
6. The law is well-established (and was not in dispute before the Learned Judge): where a project is likely to have a significant effect on a designated site, either individually or in combination with other plans, a Competent Authority must undertake an appropriate assessment of the implications of the project which, if the Competent Authority (as was the case here) relies solely upon Regulation 63 of the Habitats Regulations 2017,

demonstrates that there can be no reasonable doubt as to the absence of adverse effects on the integrity of the site concerned (*R (Wyatt) v Fareham Borough Council* [2023] PTSR 1952, at §9(6) [auth/515]. Lindblom LJ reaffirmed in *Wyatt (supra)* that that requirement embodies the precautionary principle and requires a “high standard of investigation” (§9(6) [auth/515]).

7. It is obvious that where there is burning and burying of waste adjacent to the proposed replacement FLL (which is plainly disturbance in the area), and the Interested Party’s own expert acknowledges the potential leaching effect given the topography, at the very least the impact had to be investigated.
8. The obvious relevance of the Unauthorised Activities to the assessment of the suitability of the proposed replacement FLL here, where the Defendant needed to be sure (beyond reasonable scientific doubt) that it would mitigate the loss of 185,000m² of land functionally linked to one of the most important waterbird habitats in the country [SBC/C1139] to warehousing, is underscored by the Defendant having considered it necessary to raise the same activities with Planning Officers in the context of determining whether permission should be granted for just five holiday lets (J/96).
9. The Court could not be satisfied that all reasonable scientific doubt could have been removed without entering the forbidden territory of planning merits, *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446, §273 (in respect of which see further below); and the Learned Judge erred in law by:
 - a. Entering the arena of planning merits; and
 - b. Relying upon *ex post facto*, obviously self-serving, desktop assessment by the Interested Party’s own expert in accepting Ms Fox’s “specialised evidence and conclusions” (J/103-105).
10. The Court of Appeal warned in *R (United Trade Action Group Ltd) v Transport for London* [2022] RTR 2, §125(1)-(2), (7), that the Court should exercise caution in admitting and considering evidence generated after the relevant decision, which is “inherently likely to be viewed as self-serving”, because “it cannot have played any

part in the making of the challenged decision” and there is a distinction between “genuine elucidation of a decision and impermissible justification or contradiction after the event”.

11. It is obvious here, given (as set out above) that the decision-maker, the Interested Party (their advisors) and Natural England did not know at all about the Unauthorised Activities at the time of the Decision, and there is no reference at all to those activities in the Officer Reports, that Ms Fox’s evidence is not “genuine elucidation” (quite simply, there was nothing to elucidate) but after-the-event “impermissible justification”. The Learned Judge thereby erred in law in failing to recognise the nature of this evidence and accepting its conclusions unflinchingly.
12. Further, it must be at the date of adoption of a decision to authorise the plan or project in question that the Competent Authority must be satisfied, in light of the assessment carried out, that there can be no reasonable doubt as to the absence of adverse effects on the integrity of the site concerned (*Dansk Akvakultur (acting for AquaPri A/S) v Miljø-og Fodevareklagenævnet* (Case C-278/21) [2023] P.T.S.R. 187, §53). Thus, it is no answer to the failure to consider the impact of the Unauthorised Activities when taking the Decision, that the activities might be addressed later, in a detailed mitigation strategy in accordance with the mechanism set out in the Section 106 Agreement² (cf. J/106-107). No authority was cited by either the Interested Party or the Defendant and in turn, the Learned Judge, to support the proposition to the contrary. The Learned Judge erred in law on this point.
13. Overall, the Learned Judge erred in law in his approach to Ground 2, instead, belittling the ground as an *ad hominem* challenge (J/108) (even though the landowner’s conduct in permitting these activities on the estate is plainly relevant to the possible effectiveness of land management).

² That does not obviate the need for the Defendant to discharge its obligations under the Habitats Regulations 2017 when considering whether the Section 106 Agreement is complied with.

GROUND 2: The Learned Judge erred in his approach to Ground 4 (in-combination effects)

14. It is apparent that the Learned Judge failed to understand Ground 4, which was concerned principally with considering the real-world effects of the Development and its proposed replacement FLL in a silo from other neighbouring development, Castle Manor, and its proposed replacement FLL (SFG, §§81-82, 86 [CB/A123-A124]).

15. This error is evident at (J/125-127) where the Learned Judge (wrongly) suggests that the first strand of the Ground is concerned with the possibility that small impacts from discrete plans or project might aggregate to create a material impact on the SPA. This was no part of the Claimant's case; rather, the Claimant was concerned that the Defendant's approach of assessing the effects in silos was unlawful with specific examples of that point set out as strands two and three, as identified by the Learned Judge (J/124) – viz., that:

- a. The Defendant failed to address the acoustic disturbance issue, whereby the present development would appear to impact adversely upon the replacement FLL for the Castle Manor Farm development; and
- b. The Defendant failed to address the in-combination effect of the unauthorised waste operations at the Lilford Hall Estate and the proposed Habitat Bank.

16. Reverting to the “first strand”, however, the Learned Judge concluded that there was “no substance” (J/125), and explained that (at J/126):

“[...] [T]he Claimant does not point to any evidence to suggest that notwithstanding the provision of the FLL for the Castle Manor Farm development and for the present proposed development, each would have some failing or deficiency that is capable of being aggregated, so as to produce a deficiency capable of impacting the SPA to a significant extent.”

17. Notably, this relied upon the reasoning of the Inspector in the Castle Manor Farm appeal (J/127, 132); and the Learned Judge determined that, given the time has passed for a challenge to that appeal, the presumption of regularity applies (J/131). In these regards, however:

- a. First, the Learned Judge failed to recognise that STAUNCH explained that it simply could not afford to challenge both the Castle Manor Farm decision and the Decision in issue in these proceedings (WS1/KS, §24 [CB/A196]);
 - b. Second, a decision of a Planning Inspector does not, in any way, bind the High Court; and
 - c. Third, it did not obviate the need for the Learned Judge to consider for himself the second and third strand arguments as he unidentified them – viz., the lawfulness of the approach of aggregating (in silos) zero residual effects plus zero residual effects to give zero residual effects without considering at all the real-world interplay between the two developments, their proposed replacement FLL, and the effectiveness of that proposed replacement FLL given the other proposed development, when assessing the in-combination effects of the projects.
18. The acoustic disturbance issue was a specific illustration of how the Development could impact on the proposed replacement FLL for the Castle Manor Farm and why, therefore, it was unlawful for the Defendant to consider the effects of individual projects in neat, isolated boxes, giving the result of no residual effect, and then aggregating the no residual effects together.
19. It is noted in this regard that the Learned Judge correctly accepted that the acoustic disturbance issue was covered by the Statement of Facts and Grounds, (J/127, 129-130) (and that finding is not challenged). However, the Learned Judge determined, without any evidence from the Defendant or the Interested Party, that the matter was “very far from being an obviously material consideration” because it was not raised at the Castle Manor Farm Inquiry (J/131). This is wrong as a matter of fact. The Learned Judge therefore erred in his determination of Ground 4 on this basis alone.
20. Further, however, and in deciding as he did, the Learned Judge:

- a. Like, the Defendant, simply failed to recognise that the lawful consideration of in-combination effects necessitated addressing the possibility that the development in issue might impede the effectiveness of the mitigation determined to be necessary for the Castle Manor Farm development through, for example, causing noise and disturbance; and/or
- b. Unlawfully entered the forbidden territory of planning merits, in determining that, had the Defendant addressed the possibility of the development in issue impacting the effectiveness of the proposed mitigation for Castle Manor Farm, then it would still have concluded that the replacement FLL was effective mitigation; and/or
- c. Determined that the impacts of the development in issue on the effectiveness of the proposed mitigation for Castle Manor Farm could be addressed at a later stage, for example through discharge of a planning condition dealing with boundary treatment (J/133), in circumstances where the Competent Authority is required to be satisfied, beyond reasonable scientific doubt, at the time of deciding to authorise the project (i.e. at the date of the Decision).

CONCLUSIONS

- 21. For the reasons set out above, the Grounds of Appeal have a real prospect of success and permission to appeal ought to be granted on that basis.
- 22. In the alternative, the Court is invited to grant permission for some other compelling reason, given:
 - a. The important public law point as to how a Court should approach an issue (here, the Unauthorised Activities) where the undisputed factual position is that issue was not known, investigated or taken into account in the Decision; and
 - b. The magnitude of the extensive warehousing development, along this part of the A14, authorised by this Decision alone and in combination with other neighbouring developments and its impact on the open countryside and one of the most important waterbird habitats in the country.

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