

Case Name: *Preston, R (on the application of) v Cumbria County Council* [2019] EWHC 1362 (Admin) (31 May 2019)

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Commentary: A successful judicial review claim finding that the Council's decision to grant planning permission was unlawful because 1) there had not been a "screening opinion" for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the "EIA Regs") and 2) there had not been an "appropriate assessment" for the purposes of the Conservation of Habitats and Species Regulations 2017 (the "Habitats Regulations").

The Claimant, a trustee of the Kent (Westmorland) Angling Association, which has exclusive fishing rights on a stretch of the River Kent, challenged the decision of the Council to grant planning permission which had varied a condition imposed on an earlier permission authorising the installation of a temporary outfall from the Interested Party's wastewater treatment works (the "Plant") into the River Kent. The effect of the permission was to extend further the time for which that development was permitted. The Council defendant accepted that the decision was unlawful and did not defend the claim.

The Interested Party argued that the development for which the permission was given was outside the scope of the EIA Regs, meaning that no screening opinion was required. The Interested Party also argued that in the circumstances the Habitats Regulations did not require there to be a further appropriate assessment, as an assessment of likely significant effects was provided which considered the potential effects of the construction of the temporary outfall.

On the first point of challenge, his Honour Judge Eyre QC held that the permission authorised development which was Schedule 2 development falling within the meaning of both (a) and (b) of the definition of Schedule 2 development in the EIA Regs. Regulations 6 and 8 require a screening opinion to be adopted where there is an application for Schedule 2 development. Therefore, it was held that "the absence of such an opinion was a fundamental flaw in the process with the consequence that the permission was not granted lawfully".

On the second point of challenge his Honour Judge Eyre QC held that the assessment of likely significant effects provided only considered the potential effects of the construction of the temporary outfall and there should have been a further appropriate assessment addressing the potential effects of the discharge through the outfall, therefore there was a failure to comply with the requirements of the Habitats Regulations.

Both grounds of challenge having been established the grant of permission was unlawful and permission can be quashed subject to submissions from the parties as to the appropriate form of order.

Case summary prepared by Town Legal LLP