

**Case Name:** *Townley, R (On the Application Of) v Natural Resources Wales* [2021] EWHC 2391 (Admin) (27 August 2021)

**Full case:** [Click Here](#)

**Commentary:**

The River Wye is designated as a Special Area of Conservation ("SAC") under the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). In addition, some sites along the River Wye are designated as Sites of Special Scientific Interest ("SSSIs") under the Wildlife and Countryside Act 1981.

Where it appears that a plan or project is likely to have a significant effect on a protected site (either alone or in combination with other plans or projects), under regulation 24(1) of the Habitats Regulations, National Resources Wales ("NRW", as competent authority) is required to make an appropriate assessment ("AA") of the implications for the protected site in view of its conservation objectives. Regulation 24(2) of the Habitats Regulations provides that consent may be given for the operation only after NRW has ascertained that the plan or project will not adversely affect the integrity of the site.

NRW granted consent on 5 January 2021 for Wye Valley Canoes ("WVC", the interested party in this case) to launch up to 40 canoes, 20 kayaks and 5 paddle boards a day onto the River Wye from a boat house at Glasbury, which is several kilometres upstream from Hay. The consent was subject to conditions, one of which restricted any launches when frequent grounding was likely in the passage downstream to Hay in order to avoid damage and deterioration to the riverbed, gravel shoals and water crowfoot beds.

The claimant owns land and fishing rights downstream of Glasbury where people who hire WVC's canoes paddle. The claimant sought to challenge by way of judicial review the lawfulness of NRW's decision to grant the consent on the ground that NRW did not fulfil its obligations under the Habitats Regulations to be satisfied beyond all reasonable doubt that where there is a likely significant effect on the site, the proposed mitigation will be effective.

NRW undertook an AA. The conclusions of the AA were that likely significant effects on the integrity of the site could not be ruled out because the impact pathway (from the launching of canoes) would damage or disturb the designated species features and mitigation measures were required, specifically during periods of very low flow when grounding was likely. This was the harm that concerned the claimant and the harm which the condition restricting launches when frequent grounding sought to prevent. The claimant alleged that the wording of the proposed condition was imprecise, subjective and ineffective.

At the oral renewal hearing (permission having been refused on the papers), the High Court held that NRW's decision to address the potential harm by the imposition of a condition was "comfortably within the margin of appreciation to be afforded to NRW". Under the Habitats Regulations, the High Court noted that NRW must be sure that the consent will not adversely affect the integrity of the site but it did not have to be sure that no part of the riverbed or

gravel shoals will be disturbed or that no part of the water crowfoot beds will be damaged by granting the consent.

The High Court further found that the claimant had failed to show that NRW's proposed mitigation condition was "so unreasonable that no competent authority proceeding lawfully could have come to such a decision". Accordingly, the High Court refused permission for the claimant to challenge NRW's decision to grant the consent by way of judicial review.

*Case summary prepared by Nikita Sellers*