

**Case Name:** *CG Fry & Son Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor* [2024] EWCA Civ 730 (28 June 2024)

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

**Commentary:** The Court of Appeal has held that an appropriate assessment (an “AA”) of a proposed development under the 2017 Habitats Regulations may, in some cases, be required to be undertaken when an application is made for the approval of reserved matters or the discharge of other pre-commencement conditions.

This case relates to Natural England’s advice in 2020 that, due to potential harm to Special Areas of Conservation, Special Protection Areas and sites designated under the Ramsar Convention (together “protected sites”) caused by:

- 1) water abstraction;
- 2) recreational pressures; and
- 3) the release of nutrients such as nitrates and phosphates,

residential development should not be permitted in certain areas without an AA demonstrating that the development will not have an adverse effect on the integrity of protected sites. AAs are usually carried out when outline or full planning permission is being granted for development that is likely to have a significant effect on a protected site, but Natural England’s position was that an AA could be required at condition discharge stage in these circumstances.

The High Court agreed. It recognised that, on a natural and ordinary reading of regulation 63 of the 2017 Habitats Regulations, they do not require an AA after planning permission has been granted. However, on a purposive reading in the light of binding case law, the regulations require an AA before any consent, permission or other authorisation is given for a project which is likely to have significant effects on a protected site. The High Court considered that ‘giving consent for a project’ for these purposes extended to approving reserved matters and discharging pre-commencement conditions.

Upholding the High Court’s decision, the Court of Appeal noted that, if the legislation were not interpreted in this way, there would be a gap in the regime which would enable development to proceed with potentially harmful effects on protected sites without an AA being undertaken simply because these effects were only identified after the first stage in a multi-stage consent process. This would be incompatible with the purpose of the legislation which was to prevent harm to protected sites.