

APPEAL TO PLANNING AND ENVIRONMENT DECISIONS WALES

APPEAL REF: CAS-02486-Y2G4M3

PURSUANT TO SECTION 43 OF THE WATER RESOURCES ACT 1991

BETWEEN

CANAL & RIVER TRUST

Appellant

and

NATURAL RESOURCES WALES

Respondent

**APPELLANT'S RESPONSE TO RESPONDENT'S
STATEMENT OF CASE**

**IN RESPECT OF LICENCE WA/056/0044/0004,
SITE CRT327, RIVER USK AT BRECON**

- 1 The issues on this appeal centre round the Respondent's failure to:
 - (a) consider the full suite of duties under the Well-being of Future Generations (Wales) Act 2015 ("2015 Act") and;
 - (b) consider properly the impact of its proposed restrictions upon the Monmouthshire and Brecon Canal (the "Canal").
- 2 The response and the case generally should be read with the Trosnant Spring appeal (CAS-02485-Q0R8C3), as they both concern feeders to the same Canal.

Well-being of Future Generations (Wales) Act 2015/Water Environment (Waste Framework Directive) (England and Wales) Regulations 2017

- 3 The rival contentions are set out at [60]ff of the Appellant's Statement of Case ("SoC") and [7] of the Respondent's. But nowhere in the Respondent's contemporaneous consideration of the documents is there any sign that the actual decision-maker has considered the 2015 Act, and in particular the benefits of the water supply to the Canal as weighed against any downsides of the current abstraction.
- 4 All the Respondent's references to the 2015 Act in its SoC are at the highest level of generality.
- 5 This decision-making process is procedurally not in accordance with the 2015 Act, which is about the integration of all the well-being goals into public decision-making.
- 6 Nor does the Respondent establish that its restrictions are substantively justified.
- 7 On any view, the decision needs re-assessing in the light of the obligations under the 2015 Act.
- 8 As [80] of the Appellant's SoC makes plain, the Appellant is not seeking an unconstrained licence, just a decision by the Respondent or the Inspector which properly reflects and takes account of the full range of duties to which the Respondent is subject.
- 9 In this context, the Appellant repeats the point that the Respondent has given no or no substantive consideration to the effect of the licence restrictions on the water status of the Canal as assessed under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ("WFD Regulations 2017"). This is remarkable given the Impact of Restrictions Report (Appendix 16 attached to the Grounds of Appeal). Those licence restrictions risk leading to a "deterioration" of the Canal from its current "good" status to "poor": see [63] of the Appellant's SoC.
- 10 The Respondent addresses potential impacts on the Canal briefly at [6.3.6-6.3.10] of its SoC, but it does not acknowledge their significance or the implications for its own duties under the WFD Regulations 2017.

- 11 The Respondent makes fleeting reference to the WFD Regulations 2017. However, there is no sign in the Respondent's SoC that it has given any actual site-specific consideration under those regulations to the impact of the restrictions in the issued licence on the Canal. As the Appellant points out, that was its statutory duty under reg.3(2) of those regulations when determining an application for an abstraction licence. It has not performed that duty.
- 12 The Appellant set out the detail as to these impacts at [61-67] of its SoC.
- 13 In [5.1.3] of the Respondent's SoC, it makes reference to the Appellant's own duties under the Habitats Regulations – of which the Appellant is well aware. But insofar as a point is made against the Appellant in this respect, it should be recalled that this is a long-standing abstraction for which no fresh appropriate assessment is required by it before making its application for a transfer licence.

DCWW

- 14 As the Appellant explained at [37] and [78] of its SoC, the Respondent determined the abstraction licence on an assumption that the Appellant will be able to obtain additional water from Dŵr Cymru Welsh Water ("DCWW") under a commercial agreement not yet finalised with DCWW and which is likely to take several months to conclude.
- 15 The Respondent addresses this briefly at [6.3.7-6.3.8], but does not consider the position if that water does not become available at all, or not on commercially viable terms. Pending conclusion of such an agreement, the Appellant will have to increase the frequency and duration of closures of the Canal to comply with the licence in its present form.
- 16 The Respondent does not acknowledge that outcome as a likely consequence of its restrictions on abstraction quantities.

Conclusion

- 17 In all the circumstances, the Appellant invites the Inspector to delete conditions 6 and the HoF elements of condition 9, namely 9.1-9.6 and 9.9-9.10 in their current form.

DAVID HART K.C.

12 May 2023