

Case Name: *Keir, R (On the Application Of) v Natural England* [2021] EWHC 1059 (Admin) (27 April 2021)

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Commentary:

This was an unsuccessful challenge to Natural England's decision to grant a licence under the Conservation of Habitats and Species Regulations 2017 for the felling of 19 trees as part of the HS2 development which may disturb a protected species of bat.

The claimant raised 5 grounds of challenge which were that Natural England had:

1. Failed to consider whether the proposed works would be detrimental to the favourable conservation status of the barbastelle bat species;
2. Failed to give reasons for its departure from its own policy and guidance;
3. Erred in fact regarding whether HS2 had consent to erect the mitigation proposed;
4. Failed to give reasons for the inconsistency of its decision with its previous decision to refuse the licence; and
5. Acted irrationally in failing to acquaint itself with sufficient information to be able to take the decision.

Ground 3 was later withdrawn. While the court noted that barbastelles were one of the rarest mammals in the UK with a population estimated to be as low as 5,000, it found that all of the claimant's remaining grounds were unarguable. It did not consider there to be any arguable legal error, finding the claimant's case to involve a highly selective filleting of the application material and an excessively legalistic and forensic approach. The court also noted that there was also nothing to suggest that there was no adequate scientific evidence to support the use of bat boxes as mitigation for the loss of bat maternity roosts. While it accepted that there was a legitimate dispute between experts on this issue, it stated that such a dispute did not constitute a legitimate ground for judicial review. Finally, the court was satisfied that the high hurdle which applies to arguments of irrationality, particularly in the field of specialist scientific expertise, had not been met.

The claimant had successfully applied for an interim injunction to prevent the felling of the trees pending the outcome of the claim. Given that all of the claimant's grounds of challenge had failed, the court went on to overturn the injunction. Considerable weight was given to the potential cost of £25 to £50m of delaying the works and to the public interest in the continuation of the HS2 project without substantial interruption.

Case summary prepared by Safiyah Islam