

Case Name: *Wyatt, R. (On the Application of) v Fareham Borough Council* [2021] EWHC 1434 (Admin) (28 May 2021)

Full case: [Click Here](#)

Commentary:

This was an unsuccessful challenge to Fareham Borough Council's decision to grant outline planning permission for the construction of eight 4- to 5-bedroom houses and a paddock on a 1.97-hectare site approximately 5.6 km from the Solent.

Before the formal grant of permission, Natural England published an advice note to 12 local planning authorities in the Solent region requiring developments to be 'nitrate neutral' by providing perpetual mechanisms to offset any nitrates which might be discharged into the Solent or one of its river catchments. This is because increased levels of nitrates entering the Solent, for example from wastewater leaving dwellings, can cause increased growth of plants and algae which affects oxygen and light levels in the water affecting species and habitats in the marine environment. As a result, the application was reconsidered and amended to include a wetland area on the site. The applicant's calculations showed a nutrient credit predicated on an occupancy rate of 2.4 persons per property and part of the grassland area being used for lowland grazing.

The claimant argued that Natural England's advice did not meet the required standard of certainty under regulation 63 of the Conservation of Habitats and Species Regulations 2017 which requires competent authorities to, before granting permission for proposals which are likely to have a significant effect on a European site and are not directly connected with or necessary to the management of that site, make an appropriate assessment of the implications of the proposals on that site. The claimant contended that the existence of scientific uncertainty around the nitrates issue rendered it impossible for the Council properly to conclude that the project may proceed.

The court noted that since there was a considerable degree of scientific uncertainty surrounding the impact of new development on protected sites, the precautionary principle was applicable. This principle provides that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation. The court held that, in contrast to this principle, the claimant's case was that uncertainty should rule out any development in the Solent region, "an unattractive submission given the exigencies of the real world."

Dismissing the claim, the court considered the majority of the claimant's 8 grounds to be overly technical or "at the fringes of arguability" and found Natural England's advice in relation to the Solent region to be "impeccable in all material respects". It was noted that national advice was being prepared and that Natural England wished to consider the outcome of this challenge before publication.

However, the court did question the Council's use of a national average when estimating the occupancy of the new dwellings within the development to be 2.4 people, affecting its appraisal of likely water consumption by residents. Although it did not consider the occupancy estimate used by the Council to be irrational or in violation of the precautionary principle, the court did warn that its judgment should not be interpreted as "giving a clean bill of health" to the use of a national occupancy rate in all circumstances, even those which cannot be described as atypical.

Case summary prepared by Safiyah Islam