

Case Name: *The Manchester Ship Canal Company Ltd v Secretary of State for Environment, Food And Rural Affairs & Anor* [2022] EWHC 3282 (Admin) (19 December 2022)

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Commentary: In *Manchester Ship Canal Company v SSEFRA*, the High Court dismissed a legal challenge to the decision of the Secretary of State to confirm a CPO made under section 155 of the Water Industry Act 1991 ("WIA 1991") to allow a sewerage undertaker to discharge water, soil and effluent into the Manchester Ship Canal, without including statutory protective provisions for the landowner of the canal.

The statutory review was brought by the Manchester Ship Canal Company ("MSCC") who are the owner, statutory undertaker, and navigation authority for the Manchester Ship Canal against the CPO made by United Utilities Water Limited ("UU") on 21 September 2016 authorising UU as the sewerage undertaker for the North West of England to compulsorily discharge water, soil, and effluent from its sewers into the Manchester Ship Canal.

The legal challenge by MSCC was advanced on 2 grounds. Ground 1 was that the Inspector had erroneously applied a test of necessity in deciding not to include the discharge proviso (i.e. a collection of statutory protective provisions in the WIA 1991) within the terms of the CPO. Ground 2 was that the Secretary of State and/or his Inspector had erred in law in their consideration of MSCC's right to peaceful enjoyment of its possessions protected pursuant to A1P1 ECHR.

As to Ground 1, the Inspector concluded that the inclusion of the discharge provisions (i.e. protective provisions) sought by MSCC in the CPO were unnecessary. The High Court held that this conclusion (endorsed by the Secretary of State in his decision letter) was not because the Inspector had erroneously treated necessity as a legal test (as contended by MSCC) but rather that this was a matter of judgment properly reached by the Inspector in the public interest, based on a lengthy examination of the evidence, over 29 days of the inquiry at which MSCC was legally represented and had an opportunity to put its case fully as the sole objector to the CPO. The Inspector's main reasons for considering the discharge proviso to be unnecessary were, in summary, because: (i) the discharge was to be regulated by the Environment Agency; (ii) the public inquiry had provided an opportunity for an independent scrutiny of the potential interference with MSCC's rights; (iii) the discharge provisions did not apply to a right granted under section 155 WIA 1991; (iv) the water quality evidence demonstrated that the scheme would have a net beneficial effect on the water quality of the Manchester Ship Canal; and (v) compensation was payable to MSCC.

As to Ground 2, the High Court concluded, when assessing whether the interference with MSCC's property was proportionate, that the balance struck by the statutory regime was to provide a procedure under section 155 WIA 1991 whereby landowners

can seek appropriate protection from any interference, via independent scrutiny of their interests, alongside the wider public interest. Applying existing case law, the High Court held that whether the CPO strikes a fair balance between the private rights of MSCC and public interest under the statutory scheme was an assessment inherently more suited for decision by the Inspector/Secretary of State during the inquiry process rather than in litigation. Accordingly, and on the case advanced by MSCC, the High Court was satisfied that the terms of the CPO (absent the discharge proviso and given that MSCC could bring a claim at common law, in the event of any negligence or deliberate misconduct by UU, with, or without, the discharge proviso) struck the necessary fair balance.

Case summary prepared by Paul Arnett