

Case Name: *Tarian Hafren Severn Shield Cyf, R (On the Application Of) v Marine Management Organisation* [2022] EWHC 683 (Admin) (24 March 2022)

Full case: [Click Here](#)

Commentary:

This unsuccessful claim for judicial review considered whether the power to vary a marine licence pursuant to the Marine and Coastal Act 2009 (the 'Act') cannot be used to licence a marine licensable activity which is not already permitted by the licence being varied. The claimant opposed the disposal of material dredged from the Severn Estuary back into the Severn; an exercise undertaken in relation to the Hinkley Point C Project, consented by way of development consent order (DCO) on 18 March 2013 for which this claim's interested party (HPC) was the promoter. The claimant brought the claim following concern that the dredged material contained fine radioactive particles.

The Marine Management Organisation (MMO) granted the marine licence for marine works on 7 June 2013, supplemented by a licence granted by Natural Resource Wales for the disposal of the dredged material at the Cardiff Grounds site on 11 July 2014. A number of variations were made to the licence, the sixth, approved on 2 August 2021, being the subject of this claim. The sixth variation sought to continue existing activities permitted and to propose further activities including updated details for the location for disposal of the dredged material. The approved details of disposal are the subject of this challenge, however, the acts of dredging and disposal had been completed by the date of the claim and so the position was irreversible.

The claim comprised 4 grounds (the third ground being dropped in skeleton).

Ground 1 argued that the decision on 2 August 2021 to vary the licence to add a wholly different activity which was not previously authorised was ultra vires.

Ground 2 proposed that if ground 1 should fail, the MMO may only exercise its power to vary a licence by adding additional activities if they have a relevant reason for doing so and identify said reason. No such reason was identified, nor did such reason exist.

Ground 4 argued that in granting the variation, the MMO failed to comply with the waste hierarchy (Article 4(1) of the Waste Framework Directive (Directive 2008/98/EC) and failed to comply with regulation 22 of the Waste (England and Wales) Regulations 2011.

Ground 5 argued that in granting the variation, the MMO failed to comply with the Water Framework Directive (Directive 2000/60/EC) and, in particular, failed to consider whether the disposal would jeopardise the attainment of "good surface water status".

The Court concluded that the claim for judicial review should be dismissed as each ground was rejected for the following reasons.

Ground 1 failed on the construction of section 72 of the Act. The court held that the legislation does not exclude the authorisation of an activity not previously authorised by the licence in question, so long as that activity represents a variation of that licence. The court found that a change in location for disposing of the dredged material was not beyond the MMO's power to vary the licence.

Ground 2 failed as the Court considered that the MMO's legislative power to vary was sufficiently broad so that there was no justification to construe the legislation restrictively and impose a duty upon the MMO to give reasons for varying marine licences. The language of section 72 of the Act only attempts to guard against the arbitrary use of the MMO's power. Detail as to the MMO's processes assisted in evidencing the consideration given to the request to vary.

Ground 4 was dismissed as both the DCO and licence required the dredged material to be returned to the Severn Estuary. It had already been sufficiently determined that the return of the dredged material would be compliant with the waste hierarchy, specifically as the disposal was necessary to maintain the relevant sediment budget.

Ground 5 was dismissed as the MMO had assessed that the return of the dredged material would cause no harm to water quality and insufficient evidence was put forward by the claimant to suggest otherwise. The Court remarked its surprise this ground was pursued given the detailed responses provided by the MMO and the promoter.

Case summary prepared by Matt Speed