

Case Name: *R (on the application of Wild Justice) v Pembrokeshire Coast National Park Authority and Adventure Beyond Limited* [2025] EWHC 2249 (Admin)

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Commentary: Mr Justice Eyre quashed a decision by the Pembrokeshire Coast National Park Authority to permit Adventure Beyond Limited to use a site as an outdoor adventure centre on two grounds. First, the Defendant failed to disclose a draft ecological report which had been relied on in the planning officer's report, contrary to section 100D of the Local Government Act 1972 and the procedural fairness duty. Second, the Defendant failed to consider a mandatory relevant consideration, namely a policy which applied a presumption against development impacting Sites of Special Scientific Interest in Wales.

Three further grounds relating to the approach to the Habitats Regulation Assessment carried out by the Defendant and the adequacy of the conditions imposed to prevent harm to the integrity of the SAC did not succeed.

The Facts

The Interested Party, Adventure Beyond Limited, operates a coasteering and kayaking business on the Pembrokeshire coast. Coasteering encompasses a range of activities, including wild swimming, cliff traversing, and the exploration of coastal caves. The Interested Party sought to move to a nearby site, where new facilities would allow for the continuation and expansion of its business. Among the locations intended to be used for coasteering activities was Ceibwr Bay.

On 16th October 2024, the Defendant granted the Interested Party planning permission for a change of use of the new site for use as an outdoor adventure centre. In doing so, the Defendant relied on an Officer's Report and a Habitats Regulations Assessment (HRA), produced by its Planning Ecologist.

Ceibwr Bay belongs to the Aberath-Carreg Wylan Site of Special Scientific Interest ('ACW SSSI'), the Cardigan Bay Special Area of Conservation (SAC), and the West Wales Marine SAC. In addition, members of species associated with the Skomer, Skokholm and Seas off Pembrokeshire SAC are occasionally present. Choughs, a bird species among the protected features of the ACW SSSI, are particularly vulnerable to the disturbance of their nests in cliff crevasses. Grey seals are associated with the Cardigan Bay SAC.

Grounds of Appeal

The five grounds of appeal raised by the Claimant were as follows:

1. Whether the Defendant's failure to publish a number of documents prior to granting the permission breached its duty under section 100D of the Local Government Act 1972 and/or its common law duty to act fairly towards objectors.
2. Whether the potential effect of the Site on the ACW SSSI was a mandatory relevant consideration which the Council failed in substance to take into account.

3. Whether the Defendant imposed such conditions on the grant of permission as were adequate to achieve the mitigation measures which the Defendant regarded as necessary.
4. Whether the Defendant's approach to assessing the risk of adverse effects on the SAC was wrong in law, or alternatively whether the conclusion it reached was irrational.
5. Whether the Defendant assessed the ecological impact of the proposal on an unlawful or irrational basis, given the Planning Ecologist's comments regarding the long-term benefits of increased public appreciation of the SACs.

Ground 1

Section 100D obliges the Defendant to make available for inspection the 'background documents' upon which reports are based and which to a material extent are relied upon in their preparation. Although it is a matter of discretion whether a document constitutes a 'background document', Eyre J held that in this context the possible range of legitimate differences of opinion will be limited.

The Defendant failed to publish the September draft of the National Resources Wales Ceibwr Breeding Bird Survey 2024 ('the NRW Draft'). References were made to the NRW Draft in the Officer's Report and at the committee meeting. Its conclusions were expressly relied upon when assessing potential impacts on the integrity of the SACs. Eyre J thus held that the only rational conclusion was that the NRW Draft was a background paper.

Applying the *Soneji* test, a breach of section 100D does not automatically render a decision unlawful. This will depend on the circumstances, including whether any non-compliance caused significant prejudice to those challenging the decision. When assessing prejudice, Eyre J stressed that the purpose of section 100D – to enable the public to make informed contributions to democratic decision-making – should be kept in mind. Procedural fairness similarly requires local authorities to give objectors access to the materials upon which a decision is made.

Eyre J accepted that the Defendant's failure to publish the NRW Draft significantly prejudiced the Claimant's ability to object to the proposed development. In the court proceedings, the Claimant's expert witness criticised the soundness of the NRW Draft's ecological conclusions; the Claimant was precluded from mounting this critique before the permission was granted.

Ground 1 therefore partially succeeded with respect to the NRW Draft. The Claimant's submissions in relation to several other undisclosed documents failed. Obiter, Eyre J held that confidentiality would not have negated any duty to disclose under section 100D.

Ground 2

At paragraph 6.4.26 of Planning Policy Wales (12th edition) ('PPW 12'), there is a presumption against development which is likely to damage a SSSI. At no point in either

the committee meeting or the Officer's Report was the presumption at paragraph 6.4.26 expressly addressed.

The committee were therefore not alerted to the fact that the development risked impacting protected features of the ACW SSSI, such as chough populations. The only reference to birds in the Officer's Report was to auks, which were said not to be a designated feature of the SAC under consideration. In Eyre J's view, this came close to being advice that the members need *not* have regard to the potential impact on birds. Consequently, he rejected the Defendant's argument that the effect of the presumption had been addressed in substance.

Dismissing the Defendant's alternative argument, Eyre J further held that the presumption was a mandatory relevant consideration. Notwithstanding the Defendant's suggestion that choughs were not currently nesting in Ceibwr Bay, he held that there clearly was potential for choughs to nest in an area of which they are a designated feature. The Defendant could not therefore maintain that the presumption was not engaged in the circumstances. Ground 2 therefore succeeded.

Ground 3

The Claimant submitted that three conditions of the permission were not adequate to protect the integrity of the SAC: a requirement to post boards warning against wildlife disturbances; a restriction of the use of the building to the Interested Party unless prior approval is obtained; and a requirement to agree a transport and access management plan ('TAMP') prior to commencement (which would limit the types of activities, number of participants, and areas used during different times of year).

Planning conditions must be 'adequate' to the 'standard of rationality' (Sales J in *Leeds CC v Secretary of State for Communities and Local Government* [2009] EWHC 1014 (Admin) at [35]). The Claimant further relied on the CJEU decision in *Holohan v An Bord Pleanála* [2019] PTSR 1054, which was said to impose a higher requirement in cases where the relevant objective was the protection of the integrity of an SAC. This interpretation was rejected by Eyre J, who considered *Holohan* to amount to a conclusion on its facts that the authority could not leave important protections to be determined at a later date.

Eyre J dismissed the challenges to all three conditions. Although personal planning conditions which do not run with the land may be criticised, the fact that there is PPG Guidance on such conditions demonstrates that they are not irrational. The challenges to the other conditions were misconceived because they supposed that the Defendant was merely incorporating existing guidance, such as the Pembrokeshire Marine Code, in its boards and management plan. In reality, the conditions required the approval of the TAMP which allowed the Defendant to proceed on the basis that it would not approve the TAMP unless the proposals are accorded with best practice and were sufficient to prevent harm to the integrity of the SAC.

Ground 4

Given the potential impacts on SACs, the Defendant was required by the Conservation of Habitats and Species Regulations 2017 to carry out a HRA. The correct approach is set out in regulation 63. The Claimant argued that the Planning Ecologist's HRA did not follow the correct approach because she regarded some harm to the site's integrity as acceptable. Alternatively, the Planning Ecologist's conclusion that the site's integrity would not be affected by the development was said to be irrational.

The Planning Ecologist clearly stated the correct test within her HRA. Although she referred to the potential for adverse impacts on individual grey seals, Eyre J interprets her as meaning that with suitable mitigation such individual disturbances would not pose a risk to the overall integrity of the site. Her conclusions therefore do not apply the wrong test. Moreover, Eyre J considered that it was rationally open to the Defendant to conclude that disturbance of individual seals was not itself a matter impacting the site's integrity.

Ground 5

Towards the end of a further note to the committee, the Planning Ecologist added that approval of the development could have the benefit of increasing public appreciation of the protected sites. The Claimant submitted that this amounted to unlawfully advising the committee to weigh the risk of harm to the integrity of the SAC against other matters.

Applying the principle of interpreting officer's reports with 'reasonable benevolence' (*R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314 [42]), Eyre J held that these comments were not intended to be weighed against her earlier conclusion that there would be no harm to the integrity of the site. Such a reading would be inconsistent with the thrust of the further note and the HRA.

Conclusion

For the above reasons, Grounds 1 and 2 were upheld. Eyre J declined to apply section 31(2A) of the Senior Courts Act 1981, as he did not consider it highly likely that the Defendant would have granted permission with the benefit of scrutiny of the NRW Draft Report and/or consideration of para 6.4.26 of the PPW 12. The Interested Party's planning permission was therefore quashed.

Case summary prepared by Archie Hunter