

# The Queen (on the application of Tarian Hafren Severn Shield CYF) and Marine Management Organisation and NNB Generation Company (HPC Limited) [2022] EWHC 683 (Admin)

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Environment Energy Hub

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Last week The High Court (Holgate J) handed down judgment dismissing the Claimant's judicial review of the decision by the Marine Management Organisation ('MMO') to vary NNB's marine licence relating to the construction of Hinkley Point C ('HPC').

One of the main issues in the case (and forming ground 1) was whether the power to vary a marine licence under s72 of the Marine and Coastal Activities Act 2009 ('2009 Act') can be used to authorise an 'activity' not already included within the licence of which variation is being sought.

The Claimant argued that because the underlying licence (and its subsequent variations) only authorised *dredging* the power to vary the licence could not be used to add the *disposal* of that dredged material as a wholly new activity.

The Court dismissed this ground of challenge. It held that the power to vary a licence can properly be used to introduce a new activity where it can be said to represent a variation of the existing licence in its current form. This will depend on matters such as the nature of the project, the terms of the licence and the nature and extent of activities already authorised. Here, it was a condition of the development consent order for HPC that the dredged material was to be disposed of within the Severn Estuary in order to maintain its sediment budget. The alteration of the licence did not go beyond the ambit of the power to vary.

Ground 2 concerned whether the MMO was required to establish a 'reason' to exercise the variation. The Claimant argued that the mere content of a proposal by NNB could not amount to a sufficient reason. The Court found that s72 confers a broad power upon the MMO and there was no justification for a restrictive approach to section 72(3).

Ground 3 which concerned the lawfulness of the habitats regulations assessment was not pursued by the Claimant.

Ground 4 concerned an allegation that there had been a failure to comply with regulation 22 of the Waste (England and Wales) Regulations 2011. The Court held that the DCO and the marine licence itself required the dredged material to return back to the Severn Estuary. The Court held that the South West Marine Plan treated the return of such dredged material as compliant with the waste hierarchy and dismissed this ground.

Finally, ground 5 concerned an alleged failure to comply with the Water Framework Directive. The allegation was that the defendant had failed to consider whether the disposal would jeopardise the attainment of 'good water status' in the Lower Severn. The Court found that the proposal had been assessed by the MMO

as causing no harm to water quality. There was no legal requirement for the applicant to take steps to improve water quality. There was also no basis for the assertion that the proposal would jeopardise achieving 'good' water quality status in the Lower Severn.

James Strachan QC and Victoria Hutton represented NNB.

Gethin Thomas was junior counsel for the Claimant.

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