



NCN: [2023] UKFTT 330 (GRC)

First-tier Tribunal  
(General Regulatory Chamber)  
Environment

Appeal Number: NV/2022/0048

Heard on 18 January 2023 (by video)

Before

JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY

Between

STUART TUCKER

Appellant

and

NATURAL ENGLAND

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr C May-Smith, solicitor, of Browne Jacobson LLP

**DECISION**

1. The appeal is dismissed.
2. Upon the agreement of Natural England on hearing the evidence of the appellant, the restoration notice imposed pursuant to the Regulatory Enforcement and Sanctions Act 2008 (the 2008 Act) and the Environment Civil Sanctions (England) Order 2010 (the 2010 Order) is varied as follows:

### **Schedule 1 – Restoration works required**

1. The removal of all caravans, trailers, vehicles, solar panels and any other structures or materials currently present on land parcel ST46451116 within the Westhay Moor SSSI, by no later than 1 April 2023.
2. The removal of all Blackthorn and Hawthorn hedging saplings planted on land parcel ST46451116 within the Westhay Moor SSSI, by hand or with the use of hand tools only, by no later than 1 April 2023.
3. The removal of all PVC sheeting currently present, whether laid on the ground for any purpose or stored, on land parcel ST46451116 within the Westhay Moor SSSI, by hand only, by no later than 1 April 2023.
4. The removal of all hardcore currently present, in use for any purpose or stored, on land parcel ST46451116 within the Westhay Moor SSSI; only after the works stipulated in Point 1 are completed, and by hand or with the use of hand tools only, by no later than 1 April 2023.
5. If conditions on land parcel ST46451116 within the Westhay Moor SSSI mean that works outlined in paragraphs 1-4 of this schedule cannot be completed by 1 April 2023, the appellant must request an extension of time from Natural England *before the expiry of the deadline*, giving reasons as to why an extension of time is required.
6. Any extension of time must be confirmed in writing to the owner of land parcel ST4641116 and must give notice of the new deadline by which the restoration works must be carried out.

### **REASONS**

#### **Background**

3. This appeal is made against a restoration notice issued to the appellant by Natural England on 28 June 2022 pursuant to section 42 of the 2008 Act and Schedule 2 to the 2010 Order.
4. The appellant owns the parcel of land ST46451116, known as Discovery Farm, which falls within the Westhay Moor Site of Special Scientific Interest (SSSI). The SSSI was notified under the Wildlife and Countryside Act 1981 (the 1981 Act) in 1985. The SSSI is part of the nationally important grazing marsh and ditch systems of the Somerset Levels and Moors.
5. The appellant purchased the land at auction on 25 November 2021. The sale was notified to the respondent by the agents. On 19 January 2022 the respondent received a complaint about activities on the land.
6. On 3 February 2022 the respondent wrote to the appellant advising that the land was within the Westhay Moor SSSI and that it was subject to a Higher Level Stewardship

(HLS) agreement expiring on 30 April 2022. The respondent asked for confirmation from the appellant that he had received and understood the information and for his address.

7. By email dated 3 February 2022 the appellant responded confirming that he had received and understood the respondent's email. He stated that he would not be continuing with the HLS agreement when it expired. He stated that he would be happy to discuss his plan for the land and to seek the respondent's advice to ensure that his 'obligations are being met and the land is treated with the respect and care it deserves'. The appellant provided his address as requested.
8. Between 3 February 2022 and 27 May 2022 there was further correspondence between the appellant and the respondent. Details of this are set out in the witness statement of Mr Connor Tomlinson. In addition, the respondent carried out a site visit on 8 March 2022.
9. On 27 May 2022 the respondent served the appellant with a notice of intent to make a restoration notice. The respondent stated that as a result of an investigation it was satisfied beyond reasonable doubt that the appellant had committed offences contrary to section 28P(1) of the Wildlife and Countryside Act 1981 (the 1981 Act) between March 2022 and May 2022. It set out the activities it considered constituted offences and set out the alleged offences.
10. The respondent advised that it intended to impose a restoration notice. The respondent advised the appellant of the restoration works that would be required in the event a notice was imposed and advised the appellant of his right to make representations and objections within 28 days of the date of the notice.
11. There is no reference to any representations or objections having been made by the appellant and on 28 June 2022 the respondent imposed the restoration notice which is the subject of this appeal.
12. There was further correspondence between the appellant and the respondent between 30 June 2022 and 9 August 2022. A site visit was made on 10 August 2022 in order that the respondent could assess whether the terms of the restoration order had been complied with. At the time of this visit the respondent was not aware that the appellant had lodged an appeal on 26 July 2022 against the restoration notice.
13. The respondent carried out a third site visit on 9 January 2023 in advance of the appeal hearing.

### **The respondent's decision**

14. The final restoration notice was served on 28 June 2022. The activities the respondent asserts the appellant has engaged in are as follows:
  - the use of caravans, a trailer and vehicles;

- the planting of hedging saplings;
  - the application of plastic sheeting causing the killing off of vegetation;
  - the use of hardcore behind the gate to allow vehicle access; and
  - the burning of timber.
15. The two offences the respondent alleges the appellant has committed are:
- (i) failure to give Natural England notice before carrying out an operation specified in the notification papers, contrary to section 28P(1) of the Wildlife and Countryside Act 1981 (the 1981 Act); and
  - (ii) intentionally or recklessly damaging any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, or intentionally or recklessly disturbing any of those fauna, knowing that what was destroyed, damaged or disturbed was within a site of special scientific interest, contrary to section 28P(6) of the 1981 Act.
16. The restoration works required of the appellant are set out at Schedule 1 to the restoration notice.
17. The respondent notified the appellant of his right of appeal and of the consequences of failing to comply with the restoration notice.

### **The appellant's case**

18. By letter received on 26 July 2022, the appellant lodged a notice of appeal. His grounds of appeal are as follows:
- (i) The respondent's decision is unreasonable because it fails to consider the scale of the harm, or the potential benefit of the activities undertaken.
  - (ii) The requirements of the restoration notice are unreasonable.
  - (iii) The imposition of the restoration notice is unreasonable because of a lack of an opportunity to engage and discuss any concerns.

### **The appeal hearing**

19. The appellant did not respond to correspondence seeking confirmation of whether he wished to have an oral hearing of his appeal. In the absence of a response, the tribunal listed the appeal for an oral hearing to take place by video. All participants were able to join the hearing without difficulty and there were no connectivity issues during the hearing. I am satisfied that this was an appropriate method of hearing and that the parties were able to participate effectively.

20. In reaching my decision, the reasons for which are set out below, I considered the appeal bundle prepared by the respondent. This contained the following:
  - The notice of appeal.
  - Natural England's response to the appeal and appendices.
  - The restoration notice.
  - The tribunal's directions.
  - Witness statements of the respondent's witnesses and exhibits.
21. In addition, I considered the respondent's expert references bundle, and a report from Philip Knight, retired horticulturalist. The appellant filed this report on 17 January 2023. The respondent had not seen the report and as a matter of fairness I allowed time for Mr May-Smith and the respondent's witnesses to consider the report before proceeding. Having considered the report, he confirmed that he was ready to proceed.
22. Mr Tucker was unrepresented and in order to ensure his effective participation in the hearing, I considered that it was appropriate for the respondent's witnesses to give evidence first. Mr May-Smith agreed to this approach. The appellant indicated that he had struggled to access the evidence in the appeal in electronic form and that as a result, he had not read the witness statements of the respondent's witnesses.
23. I agreed that rather than simply adopt their statements, it would be appropriate for them to give oral evidence for the appellant's benefit. In addition, I agreed that it would be appropriate to start with the respondent's evidence before hearing from the appellant and Mr Humphries given that the appellant was unrepresented and had not read the statements. I considered that it would ensure the appellant's more effective participation in the hearing if he was able to hear the respondent's evidence before giving his own.
24. As there were no issues of credibility and because the respondent's witnesses were giving evidence on distinct issues, it was agreed that the witnesses could all remain connected throughout.

### **The evidence**

25. The respondent relied on the evidence of three witnesses. The three witnesses gave oral evidence. Given what transpired, and because it mirrored that contained in their witness statements, I have not set their evidence out in detail here save for a short summary for each.
26. The first witness, Connor Tomlinson, is an enforcement lead adviser at Natural England. He is responsible for investigating damage to SSSIs and offences for which Natural England is the statutory enforcement body. Mr Tomlinson visited the appellant's land on 10 August 2022 and 9 January 2023. His evidence related to the

investigation and its findings as well as a detailed history of the communication between the respondent and the appellant.

27. The second witness, Sean Cooch, is a senior grassland specialist for the respondent. His role is to provide scientific and technical advice to the respondent and to external partners on nature conservation of lowland semi-natural grasslands and related habitats in England. Mr Cooch conducted a site visit to the appellant's land on 9 January 2023.
28. Mr Cooch explained the importance of the grassland found on the land, and the impact of the works on the grassland features of the site.
29. The third is Fiona Freshney who is a senior specialist in the respondent's ornithology team. She is responsible for providing ornithological advice to the respondent and its external partners. This includes providing advice on the impact of development and land use changes on sites designated for their bird interest, including the Westhay Moor SSSI. Ms Freshney visited the site on 9 January 2023 to assess its ability to support both wintering and breeding waders and wildfowl and to consider how the works could impact on those features of the SSSI.
30. The appellant had an opportunity to cross-examine the respondent's witnesses and he and Mr Humphries asked each witness a number of questions.
31. Having heard the respondent's evidence, I gave the appellant and Mr Humphries an opportunity to give evidence. The appellant explained that he had spoken to several of his neighbours about the enforcement action and stated that similar activities are being carried out on neighbouring land. He gave examples of caravans being present in other fields, there are cattle grazing, vehicles, hardcore has been spread, and there is rusting machinery lying in fields. Having spoken to other neighbours, he did not understand the respondent to be taking action in relation to such activities on any land other than his own. He stated that he and Mr Humphries could see those activities taking place elsewhere and believed that they were acceptable.
32. I indicated that I understood why they might have believed this but explained that the scope of the appeal relates solely to activities on his land as relevant to the SSSI and the restoration notice imposed on him.
33. The appellant confirmed that he understood. I asked the appellant, having heard the evidence of the respondent about why the activities on his land are considered to have caused damage and to have the potential to cause further damage to the SSSI, what his intentions were.
34. He stated that it was never his intention for things to get to this stage. He stated that he and Mr Humphries are in the process of removing items from the land. He stated that it was relatively straightforward to remove the structures and caravans. He noted that some of the items being stored on the land had come from his allotment and had not been used. They could be moved subject to having somewhere to store them. Mr

Humphries noted that as he lives in one of the caravans, he has to find a suitable alternative site for it.

35. The appellant stated that the heavy rainfall had caused them concern about how they would remove everything from the land without causing further damage. He stated that they did not wish to prolong the process, but they do not want to cause any more damage.
36. The appellant stated that they needed more time to comply. I asked the appellant to clarify whether this was a specific indication that he intended to comply with the restoration notice but that he was asking for more time to do so. He confirmed that this was the case. He stated that he and Mr Humphries will comply with the measures outlined in the restoration notice and that they asked for a reasonable time within which to do so. He said that it was difficult to say what a reasonable time would be given the weather and the state of the ground. He was unsure as to when the land would be dry enough to get vehicles on to remove items without causing damage. He indicated that he wished to comply as possible.
37. In light of the appellant's evidence that he intended to comply with the restoration notice but needed further time, Mr May-Smith sought time to take instructions. Having done so, he indicated that the respondent agreed to an amendment of the restoration notice to give the appellant more time to comply.
38. Mr May-Smith stated that the respondent had proposed a new deadline of 1 April 2023. He also stated that the respondent would consider a request for further time in the event conditions as a result of the weather made it necessary, an extension to be agreed in writing.

### **The law**

39. Section 28P of the Wildlife and Countryside Act 1981 provides for various offences. Section 28P(6) is relevant in this case and provides:
  - (6) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—
    - (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special interest, or intentionally or recklessly disturbs any of those fauna, and
    - (b) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest,

is guilty of an offence and is liable on summary conviction, or on conviction on indictment, to a fine.

40. Section 42 of the Regulatory Enforcement and Sanctions Act 2008 provides that a regulator may impose discretionary requirements on a person in relation to a relevant offence.
41. Section 36 of the 2008 Act gives the power to make orders providing for civil sanctions including discretionary requirements pursuant to section 42. Schedule 2 to the Environment Civil Sanctions (England) Order 2010 made pursuant to section 36 of the 2008 Act provides for the imposition of restoration notices.
42. Paragraph 1 of Schedule 2 provides:
- (1) regulator may by notice impose –
    - (a) a requirement to pay a monetary penalty to a regulator of such amount as the regulator may determine ('a variable monetary penalty'),
    - (b) a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the offence does not continue or recur ('a compliance notice'), or
    - (c) *a requirement to take such steps as a regulator may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed ('a restoration notice'),*
- in relation to an offence under a provision specified in Schedule 5 if the table in that Schedule indicates that such penalty or notice is possible for that offence.
- (2) Before doing so the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.
  - (3) A requirement under this paragraph may not be imposed on a person on more than one occasion in relation to the same act or omission (Emphasis added).
43. Paragraphs 2 to 7 of Schedule 2 set out procedural requirements associated with the imposition of restoration notices.
44. A right of appeal against a restoration notice is provided for in paragraph 8 of Schedule 2 to the 2010 Order. The grounds of appeal are:
- (i) That the decision was based on an error of fact.
  - (ii) That the decision was wrong in law.
  - (iii) In the case of a variable monetary penalty, that the amount of the penalty is unreasonable.
  - (iv) In the case of a non-monetary requirement, that the nature of the requirement is unreasonable.
  - (v) That the decision was unreasonable for any other reason.



(vi) Any other reason.

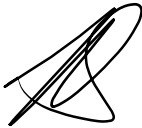
### **Findings and reasons**

45. The appellant did not dispute that he was aware that his land is within an SSSI. This fact was set out clearly in the sales particulars prior to the appellant purchasing the land at auction; he confirmed to the respondent that he was aware that the land is within an SSSI; and his website also acknowledges this fact.
46. The appellant did not dispute that the activities alleged by the respondent have taken place on the land or that they caused the impacts/damage as set out in the evidence relied on by the respondent. I have considered the report relied on by the appellant, however, it does not address the issue in the appeal. In particular it does not address the damaging effects of the hedgerows on the features of the land which resulted in it being notified as an SSSI. I place no weight on this report.
47. I am satisfied that the evidence of Mr Tomlinson is reliable and is consistent with the documentary evidence before me. I find that the evidence of Mr Cooch and Ms Freshney is persuasive, and I give it significant weight. They are both appropriately qualified and experienced to act as expert witnesses in this appeal.
48. Having considered all of the evidence, including the oral evidence of the appellant and Mr Humphries, I find that the respondent was correct to be satisfied beyond reasonable doubt that the alleged offences had been committed. The respondent was entitled to impose the restoration notice.
49. I am satisfied that the respondent complied with the procedural requirements in relation to the sending of a notice of intent and the service of the final restoration notice. While the appellant indicated difficulty in receiving documents, I am satisfied on the balance of probabilities that he did receive the notice of intent and the final restoration notice. The evidence shows that the appellant did receive emails from the respondent and that when asked to do so, the respondent sent copies of correspondence to the appellant at the address provided to him.
50. The fact that the appellant may have had difficulty opening attachments to emails is a matter for him. If he receives email correspondence containing an attachment, it is his responsibility to ensure that he can open it and if he cannot, to communicate that fact to the sender. Similarly, it is the responsibility of the appellant to check the junk folder of his email account. It is also his responsibility to ensure that he provides the respondent with a current address at which he can receive post if he wishes to receive documents in hard copy. The respondent made all reasonable efforts to ensure that communications were sent to the appellant using the contact details he provided and that they were in fact received by him.
51. The appellant's appeal was made solely on the basis that the restoration notice was unreasonable. Having heard the respondent's evidence about the features that led to the SSSI within which his land falls being notified and having heard the evidence about the impacts of the activities carried out on his land to date and the potential impacts

of planned activities, the appellant confirmed that he is now willing to comply with the requirements of the restoration notice.

52. In light of this, the respondent agreed that variation of the restoration notice was appropriate. The terms of the variation agreed by the respondent are set out above in the section headed 'Decision'.
53. Having found that the respondent was entitled to impose the restoration notice and that the appellant has indicated he will comply with the notice, in effect accepting that the respondent's decision was not unreasonable, I dismiss the appeal.
54. The respondent having agreed to vary the restoration notice in relation to the deadline for compliance, I vary the terms of the notice accordingly. The detail of the variation is set out above.

Signed



Date 19 January 2023

Judge J K Swaney  
Judge of the First-tier Tribunal