

Case Number: CMS-543

Description: A complaint concerning the alleged failures to comply with environmental law in relation to granting of assent and providing advice for the removal of saltmarsh habitat at the West Kirby foreshore.

Case Overview

Background/Complaints Summary

This complaint concerns the granting of assent for removal of 0.5ha of Atlantic salt meadow habitat by Natural England on West Kirby beach which is part of the Dee Estuary Site of Special Scientific Interest (SSSI) (referred to as 'the Project'). Assent for the Project was granted on 13 July 2023 to be undertaken by Wirral Borough Council. The site also lies within the Dee Estuary Special Area of Conservation (SAC), designated for various salt marsh and dune habitats including Atlantic salt meadows, and is part of a Special Protection Area and Ramsar site.

The complaint alleges failures by Natural England when making its decision to grant assent under Wildlife and Countryside Act 1981 and providing advice to Wirral Borough Council under the Conservation of Habitats and Species Regulations 2017 (as amended) ('Habitats Regulations'). It disputes Natural England's findings that the operation would not cause significant damage to the SSSI because the works are temporary (as the assent lasts for three years), small-scale and the habitat is quick to recover. The complaint disputes this and states the Council's application is part of a longer-term strategy to maintain a sandy beach, rather than the natural salt marsh and dune habitat. It also states the habitat subject to the Project should be considered as SN13B transitioning to embryonic shifting dune, which is a rare and significant habitat.

Additionally, the complaint alleges that Natural England's advice is likely to lead to offences in relation to the removal of European Protected Species, primarily Shore Dock (*Rumex rupestris*). Shore Dock is listed under Schedule 5 of the Habitats Regulations which makes it an offence under Reg 47 to deliberately pick, collect, cut, uproot or destroy the plant. The complaint highlights difficulties in identifying this species and states the risk of removing this species in undertaking the works should have been made clearer.

OEP Actions

We made enquiries with Natural England and Wirral Borough Council seeking confirmation of whether a Habitats Regulations Assessment (HRA), including an appropriate assessment was undertaken, details of advice provided by Natural England to Wirral Borough Council and details of the decision-making in relation to the granting of assent.

Through our initial enquiries we determined that there was an indication that Natural England may have failed to comply with environmental law. This was because Wirral Borough Council provided the OEP with a draft beach management plan which the OEP considers would have been relevant in considering the likelihood of repeat applications to remove saltmarsh. It is the OEP's view that information in the draft plan suggests that future projects for the removal of saltmarsh habitat are likely to occur at the same location as the Project, which would prevent the habitat from regenerating over time, and that this should therefore have been considered when determining the assent and providing HRA advice for the Project. There was no indication in the materials provided that this plan had been considered by Natural England, however Natural England later confirmed that the plan had not been disclosed to them for assessment.

While not subject to the original complaint, we also determined, from the information returned, there was an indication that Wirral Borough Council may have failed to comply with environmental law when undertaking a HRA in relation to the Project and in relation to undertaking a HRA of a beach management plan. This was because Natural England had advised Wirral Borough Council that the version of the HRA for the Project provided to the OEP was not sufficient to meet requirements. There was also no indication from the original HRA of the Project that WBC considered or took into account the in-combination effects of the Project with the draft beach management plan.

We therefore wrote to Natural England to:

- i. seek confirmation of whether it considered the in-combination effects of the Project with the draft beach management plan provided (and any draft or future beach management plan(s) where applicable) in determining assent and providing advice in respect of the Project, and
- ii. seek assurances that it will consider the in-combination effects for the removal of saltmarsh habitat at this location in relation to any further applications for assent and/or any HRA advice determined or given by Natural England in the future.

We also wrote to Wirral Borough Council to seek confirmation of:

- i. whether it had regard to Natural England's HRA consultation advice
- ii. that it will comply with Regulation 63 of the Habitats Regulations and have regard to any consultation advice from NE when carrying out HRA in the future
- iii. whether Wirral Borough Council carried out HRA in relation to the draft beach management plan and that it will carry out HRA in relation to draft or future beach management plan(s), and
- iv. whether it will consider in-combination effects of draft or future beach management plan(s) in relation to future projects for the removal of saltmarsh habitat at this location.

Regarding the allegations against Natural England concerning the risk of removing Shore Dock, we concluded there was no indication of a failure to comply with environmental law. It appears Natural England has advised Wirral Borough Council of its duty to satisfy itself that protected species offences would not occur and that surveys would be undertaken. Our assessment did not identify any environmental laws that would be engaged.

Conclusions and Outcomes

Assurances were given by Natural England that it considers in-combination effects in its decision-making process. Natural England also explicitly stated that in-combination effects of future projects for salt-marsh removal at this location would be considered should any further applications for assent and/or HRA consultation advice be made.

Confirmation was provided by Wirral Borough Council that Natural England's advice was taken into consideration and the HRA was amended to reflect the advice. Assurances were also provided by Wirral Borough Council that it will comply with its obligations to apply the sequential tests required by Regulation 63 and have regard to any consultation advice provided by Natural England. We have therefore concluded there is no indication of ongoing failures to comply with environmental law regarding this matter. It will also ensure that the in-combination effects of any project for the removal of saltmarsh habitat will be considered against the draft beach management plan or any future revision of the plan.

We have considered the information returned by the public authorities and are satisfied with the assurances provided. We have therefore determined we will not take further action in relation to this complaint.