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APP/WAT/656 7/34/09/*G/0086

APPEALS AND OBJECTIONS BY:

R & JM PLACE LTD; AND

ALBERT BARTLETT AND SONS (AIRDRIE) LTD

CLOSING SUBMISSIONS ON BEHALF OF THE ENVIRONMENT AGENCY

Introduction

1. This short note sets out for the Inspector the Agency's position in respect of the settlement which the Agency has agreed with the Appellants as well as confirming the Agency's position in relation to the withdrawn objections.

Proposed direction

2. The parties ask the Inspector to direct the Agency under s.54(5) WRA 1991 to:
 - (1) Vary licence 7/34/09/*G/0001 held by Bartlett for the abstraction of groundwater at Worstead, Norfolk. The licence as varied shall permit Bartlett to abstract 10 cubic metres per hour, 240 cubic metres per day and 87,600 cubic metres per year with effect from 1 October 2024 from the existing point and for the existing purposes.
 - (2) Vary licence 7/34/09/*G/0086 held by Place for the abstraction of groundwater at Church Farm, Tunstead with effect from 1 October 2024. The variation will permit
 - (a) 70 cubic metres per day and 20,000 cubic metres per year for commercial water supply and
 - (b) 300 cubic metres per day and 23,281 cubic metres per year for vegetable washing at the abstraction point TG 3140 2217 at an instantaneous

rate not exceeding 3.5 litres per second and an aggregate limit on both purposes of 303 cubic metres per day. The existing abstraction point, purposes and quantities on licence 7/34/09/*G/0086 will be removed as part of the variation.

- (3) Revoke the permanent licence 7/34/09/*G/0094 held by Place for the abstraction of groundwater at Ivy Farm, Neatishead with effect from 1 October 2024.

3. The settlement between the parties also compromises

- (1) the two New Authorisations appeals submitted by Place and will require Place to withdraw them once the direction has been carried into effect and is free from risk of legal challenge. It also prevents them from abstracting under regulation 6 of the Water Abstraction (Transitional Provisions) Regulations 2017 from 1 October 2024.
- (2) Place's application to renew licence 7/34/09/*G/0150A. The Agency will refuse this application (as it has already indicated it is minded to) and Place will not appeal it.
- (3) Part of Place's application to renew licence 7/34/09/*G/0152/R01. The Agency will grant the application in relation to the 5,000m³ currently consented at Church Farm. The other parts of the application will be determined by the Agency but do not form part of the settlement.
- (4) The Appellants' case that the decisions of the Agency (whether as originally made or as presented through its case to the inquiry) have been made for reasons other than serious damage. This is no longer to be pursued.

Agency's position

4. The background leading to this inquiry was set out in opening and in the Agency's statements of case. The Agency has formulated a strategic approach to the problem of unsustainable abstraction in the Ant Valley and has concluded that it is necessary to reduce abstraction to levels where the flow targets identified by Natural England for SAC will be met. This remains the Agency's position. However, in the light of the evidence to the inquiry, the Agency has now concluded that a lesser step than full revocation (as embodied in the draft direction and the grant of a licence permitting 5,000m³ of groundwater abstraction at Church Farm under licence 7/34/09/*G/0152/R01) can be taken (i) without breaching the flow targets and hence

consistently with the Agency and the Inspector's duties under the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**") and (ii) consistently with the Agency and Inspector's duties under the Human Rights Act 1998, other statutory duties, and the demands of good administration. In reaching this view the Agency has had regard to all of the evidence before the inquiry including:

- (1) The modelling which has been provided to the inquiry by the Appellants which shows that, given the reductions in water abstraction already secured, allowing their "minimum ask" abstraction to continue will not result in any exceedance of the flow targets set on the basis of the advice of Natural England. This modelling, the conclusions of which are contained in the report from Groundwater Science dated 23 April 2024¹ has been reviewed by WSP on behalf of the Agency and is accepted to that extent.
 - (2) The evidence showing that (i) the removal of the entirety of the Appellants' currently licensed abstractions will have significant adverse effects upon their businesses (ii) they have taken all reasonable steps to meet the needs of their businesses without ongoing reliance on groundwater abstraction including through significant financial investment in securing, respectively, mains water connections and the construction of new reservoirs and (iii) that the minimum ask to be granted is a very small proportion² of the abstraction previously allowed.
 - (3) The Agency has also taken into account Bartlett's agreement to enter into a deed requiring them to give up their abstraction rights as and when they are able to secure additional matching water supply from Anglian Water Services Limited.
5. For these reasons, the Agency invites the Inspector to make a direction in the form of the draft agreed direction submitted by the Parties. It considers that the direction can be made consistently with the Habitats Regulations and should be made as a proportionate and justified response to the evidence now available.

Implications for Appeal ref APP/WAT/644

6. The Agency's decision to enter into this settlement is founded on its acceptance of the detailed modelling demonstrating, to its satisfaction, that the flow targets can still be

¹ API/4.4

² Circa 12-13% in relation to each of the Appellants.

met whilst allowing the “minimum ask” amount of abstraction set out by the Appellants will not result in the flow targets. It does not have similar detailed modelling information in relation to Bracey or the other Time Limited Licence applications identified for refusal under the RSA programme of work but which remain to be determined³, nor has it been notified of any “minimum ask” amount of abstraction that those abstractors might put forward. However, in the light of the evidence at the inquiry the Agency intends to contact the remaining abstractors with a view to assessing what if any minimum ask they would seek and their justification for it. The Agency then intends to consider whether any proposed ‘minimum asks’ would result in breaches of the flow targets and, if they do not, whether they would otherwise be justified. As a result, the Agency will be separately writing to the Inspector to ask for appeal APP/WAT/644 to be held in abeyance to allow for this process to take its course. At the present time the Agency’s position on that appeal remains unchanged.

Position re withdrawn objections

7. The Inspector has asked for further written confirmation of the Agency’s position in relation to the withdrawn objections to the Agency’s proposals. These relate to P Boardman & N Coller, JA Paterson & Co. Ltd and Rumford Ltd (“**the Withdrawn Objectors**”), the last of which occurred in the week before the inquiry⁴.
8. As set out in opening, the Agency’s position is that as a result of the withdrawal of the notice of objection there is no need for that objection to be considered by the Inspector – the Secretary of State can simply note the withdrawal and the Agency can proceed to act under s.53(1) of the WRA 1991 to revoke the licences. The statutory regime does not expressly deal with the effect of an objection being withdrawn but the Agency’s view is that it is implicit that withdrawal of the objection results in the referral itself falling away. The statutory scheme focuses on the objection as the main matter which must be examined and considered (alongside the Agency’s proposal), absent such an objection there is no need for the referral to subsist. In practice, it has never been the Secretary of State’s approach to issue decisions on withdrawn objections – as with a

³ The Settlement Agreement covers the Place time limited licences which remain to be determined but which the Agency has previously concluded need to be refused in order to meet the flow targets. The application in relation to licence 7/34/09/*G/0150A will be refused and not appealed.

⁴ ID16

withdrawn appeal, the withdrawal is simply notified to the Agency who can then act accordingly.

9. Alternatively, the Agency agrees with the Appellants that in the absence of an objection, and hence a case for variation of the Agency's proposals supported by evidence, there is no basis for the Secretary of State to do other than uphold the Agency's proposals in relation to the Withdrawn Objectors.
10. Both possible approaches to the legal regime can be met by the Inspector simply acknowledging the withdrawal of the objections and notifying the Agency that its proposals can now be put into effect.

Conclusion

11. In conclusion, the Agency respectfully asks the Inspector to:
 - (1) Make the direction in the agreed terms; and
 - (2) To hold the New Authorisations appeals in abeyance pending their withdrawal by the Appellants under the terms of the settlement agreement.

Matthew Dale-Harris

Landmark Chambers

28 May 2024