

R (on the application of Boggis) v Natural England

January 2009



Definition of “Conservation” and Requirement to undertake an appropriate assessment of plans relating to conservation sites.

The defendant public body, Natural England, had the duty of identifying sites of special scientific interest to preserve them for present and future generations. This function is carried out by the Northern Ireland Environment Agency in Northern Ireland, where SSSI's are known as areas of special scientific interest.

The claimants applied for judicial review of a decision of Natural England to notify and confirm its decision to declare a section of coastline a Site of Special Scientific Interest. The land was considered to be of special scientific interest because the cliff faces eroded at the rate of a few metres a year to expose fossils. The claimants, whose properties were situated close to the cliff edge, had built sea defences to protect their properties from destruction. The sea defences required regular maintenance because they were continually eroded.

After calculating future rates of erosion, Natural England decided to enlarge the SSSI to include an area which affected the claimant's properties and sea defences. When a SSSI is declared, owners and occupiers receive a list of notifiable operations, or activities which might harm the nature conservation interest of the site. Natural England notified the defendants of the decision and sent a list of operations which would require Natural England's consent—including the maintenance of the sea defences.

The claimants submitted that the designation of the site as a SSSI by Natural England was a “plan or project” for the purposes of the EC Habitats Directive and therefore Natural England had been obliged to consider the need for or carry out an appropriate assessment of the implications of the SSSI designation. The claimants further submitted that the prohibition on the maintenance of the sea defences would destroy rather than preserve the geological features of the existing cliff face.

The court held the cliffs fell into the category of an “exposure site” so that conservation might result in the maintenance of that exposure. Conservation is a dynamic concept which might involve allowing natural processes to take their course, as in the case of erosion by the sea.

However the notification of the SSSI had included a formal statement of an intended course of future action in relation to the sea defences and was in that respect a “plan” within the meaning of the EC Habitats Directive. As such, it was required to be subject to an appropriate assessment of its implications in view of that site's conservation objectives.

The claimants' application was therefore granted in part because Natural England had failed to undertake an appropriate assessment of the identified site of special scientific interest and the implications for the special protection area in issue.

This decision will undoubtedly have consequences for the Northern Ireland Environment Agency together with landowners having property within, or adjacent to, an area of special scientific interest.

The case confirms that the designation of an ASSI requires an Environmental Assessment and that NIEA must carefully consider the nature of conservation.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

The Environment (Northern Ireland) Order 2002 also provides that the Environment Agency must notify a district council in whose district land to be declared as an ASSI is situated of any decision to declare an ASSI.

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