



Environmental

Clarifying The Meaning Of 'Environmental Damage' At SSSIs





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Background

Our environmental team successfully acted for Dwr Cymru/Welsh Water in an unusual case involving the use of European environmental legislation: *R (on the application of Seiont, Gwyrfai and Llyfni Anglers’ Society v Natural Resources Wales, Dwr Cymru, First Hydro Company Ltd and the Welsh Ministers* [2015] EWHC 3578 (Admin).

Challenges

In 2015, Natural Resources Wales notified Dwr Cymru under the Environmental Damage (Prevention and Remediation) Regulations (which transpose the European Environmental Liability Directive) that it had caused environmental damage to Llyn Padarn, a North Wales lake designated as a site of special scientific interest (SSSI).

NRW alleged that the damage had been caused by discharges of waste water from the Dwr Cymru works next to Llyn Padarn. It said that the water quality had deteriorated for a short period, although no damage had been caused to the species of fish – Arctic Charr – for which the lake is designated as an SSSI.

The local angling club, unhappy with the way the NRW dealt with the notice, issued an application for judicial review in 2015.

Solution

At the High Court, we successfully represented Dwr Cymru as an interested party to the legal challenge brought by the angling club.

The judge found that, in terms of SSSIs, to be classified as ‘environmental damage’ under the Environmental Damage (Prevention and Remediation) Regulations required a worsening or deterioration from a baseline condition immediately before the alleged damage. Merely preventing recovery from an existing, already-damaged environmental state did not fulfil this requirement.

This case clarified the meaning of environmental damage in respect of deterioration and impairment, and indicated the scope of the regulations as they apply to nationally designated sites, such as SSSIs.

