



Michaelmas Term

[2025] UKSC 35

On appeal from: [2024] EWCA Civ 730

JUDGMENT

**C G Fry & Son Limited (Appellant) v Secretary of
State for Housing, Communities and Local
Government (formerly known as Secretary of State
for Levelling Up, Housing and Communities) and
another (Respondents)**

before

Lord Reed, President

Lord Sales

Lord Hamblen

Lord Stephens

Lady Simler

JUDGMENT GIVEN ON

22 October 2025

Heard on 17 and 18 February 2025

Appellant
Lord Banner KC
Ashley Bowes
Matthew Henderson
(Instructed by Clarke Willmott LLP (Taunton))

First Respondent – Secretary of State for Housing, Communities and Local Government
Sir James Eadie KC
Richard Moules KC
Nick Grant
(Instructed by Government Legal Department)

Second Respondent – Somerset Council
Luke Wilcox
(Instructed by Somerset Council Legal Department (Taunton))

Intervener – Home Builders Federation and The Land, Planning and Development Federation
Zack Simons KC
Matthew Henderson
(Instructed by Shoosmiths LLP (London))

Intervener – The Office for Environmental Protection
Stephen Tromans KC
Ruth Keating
(Instructed by the Office for Environmental Protection)

Intervener – Wildlife and Countryside Link
Estelle Dehon KC
Nina Pindham
Hannah Taylor
(Instructed by Leigh Day (London))

LORD SALES (with whom Lord Reed, Lord Hamblen, Lord Stephens and Lady Simler agree):

1. This appeal is concerned with two issues of planning law in relation to environmental protection and large-scale development of land for residential dwellings. The environmental concern relates to the introduction of phosphates arising from the development into the water systems feeding the Somerset Levels and the effect that may have on the Somerset Levels and Moors Ramsar Site (“the Ramsar site”). The first issue of planning law relates to the interpretation of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) and the question whether an “appropriate assessment” is required before a local planning authority decides to discharge conditions requiring the approval of reserved matters in a grant of outline planning permission for that development (“Issue 1”). The second issue relates to the effect of a grant of outline planning permission and the impact on that of a policy adopted by the Government, which is the method by which Ramsar sites are protected in the UK, and a change of scientific advice bearing on the application of that policy (“Issue 2”).

2. The Habitats Regulations, in their original 1994 form and as amended, were promulgated to implement Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Flora and Fauna (“the Habitats Directive”) in domestic law. This background is relevant to the question of interpretation which arises under Issue 1. The Habitats Regulations remain in effect despite the withdrawal of the UK from the European Union. They constituted retained EU law under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), now called assimilated law by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

Ramsar sites

3. Ramsar sites are designated sites requiring environmental protection. They are designated under paragraph 1 of article 2 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat of 2 February 1971 (“the Ramsar Convention”) and, in England, under section 37A of the Wildlife and Countryside Act 1981. They are not protected by the Habitats Regulations. However, it is a matter of national planning policy that they should be protected, as explained in para 181 of the National Planning Policy Framework (“the NPPF”):

“The following should be given the same protection as habitats sites ... (b) listed or proposed Ramsar sites”.

“Habitats sites” are defined in Annex 2 of the NPPF as: “Any site which would be included within the definition at regulation 8 of [the Habitats Regulations] for the purposes of those regulations, including candidate Special Areas of Conservation, Sites

of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.” Para 181 of the NPPF in place at the material time, issued in July 2021, has become para 194 in the latest version of the NPPF issued in December 2024.

Factual Background

4. The appellant developer wishes to build a mixed use development including 650 dwellings and commercial and community uses, a primary school and associated infrastructure on land at Jurston Farm, near Wellington. The development site is in the catchment area of the River Tone, which feeds into the Somerset Levels.

5. There is a risk that the development will generate phosphates in wastewater and surface water entering the river, with consequent detrimental effects on the Ramsar site. The introduction of excessive phosphates into water habitats causes eutrophication and undue growth of oxygen-depleting micro-organisms which harm the ecology of those habitats.

6. On 22 December 2015 the local planning authority, Somerset West and Taunton Council, now Somerset Council (“the Council”), granted outline planning permission for the proposed development subject to 19 conditions. Condition 4 required that before any reserved matters approval was given the Council had to agree details of a site-wide surface water strategy. That condition was discharged on 5 December 2016. It was proposed that the development would come forward in eight phases.

7. In June 2020 the Council granted reserved matters approval for Phase 3, comprising 190 dwellings. Ten conditions were imposed on that approval. Those which are relevant to this appeal are the conditions relating to the need for the Council to approve measures in respect of tree protection (condition 3); “details of the surface water drainage scheme based on sustainable drainage principles” (condition 4); a construction environment management plan (condition 5); infrastructure details (condition 6); a cycleway and footpath network (condition 7); and details of the material to be used at damp-proof course level (condition 10). Conditions 3, 4 and 5 were pre-commencement conditions.

8. On 17 August 2020 Natural England published an advice note in respect of development with possible effects on protected or vulnerable sites such as the Ramsar site (“the Natural England advice”). This constituted new scientific advice in relation to the protection of the Ramsar site. It stated that in the light of the judgment of the Court of Justice of the European Union (“the CJEU”) in *Coöperatie Mobilisation for the Environment UA v College van gedeputeerde staten van Limburg* (Joined Cases C-293/17 and C-294/17) EU:C:2018:882; [2019] Env LR 27 (“*Dutch Nitrogen*”), greater scrutiny

should be given to plans and projects resulting in increased nutrient loads that might have an effect on Special Areas of Conservation, Special Protection Areas designated under the Habitats Regulations and sites designated under the Ramsar Convention. Natural England noted that the Ramsar site was at risk from eutrophication caused by phosphates arising from the development of new housing and other forms of development. It therefore advised that “before determining a planning application that may give rise to additional phosphates within the catchment [for the Ramsar site], competent authorities should undertake a Habitats Regulations assessment” (p 3). Planning permission should only be granted if the assessment enabled the planning authority to conclude that the development “will not have an adverse effect on the integrity of the site” (p 2). A “nutrient neutrality” approach (meaning that by the taking of mitigation measures there should be no net addition of phosphates or nitrates to the protected site) was likely to be a “lawfully robust solution” (p 3).

9. The Home Builders Federation, which has intervened in these proceedings, says that there is only very limited scope for mitigation measures to be taken in the vicinity of the Ramsar site, with the result that following the approach proposed by Natural England would be liable to block development near it.

10. On 9 June 2021 the appellant applied to the Council for the discharge of (which is to say, approval in respect of the matters covered by) conditions 3, 4, 5, 6, 7 and 10 of the reserved matters approval. The Council withheld its approval, relying on para 181 of the NPPF. It maintained that an appropriate assessment under the Habitats Regulations (if they had been applicable) would have been required before such a decision could be made. The validity of this contention is the subject of Issue 1.

11. On 5 April 2022 the appellant appealed pursuant to section 78 of the Town and Country Planning Act 1990 (“the TCPA 1990”) to the Secretary of State, the first respondent to this appeal, against the Council’s failure to give notice of its decision within the prescribed period. The Council resisted that appeal, relying on para 181 of the NPPF and the Natural England advice. The Council published its own provisional (or, as it was called, “shadow”) appropriate assessment of Phase 3 of the proposed development which stated that it would increase phosphate loading within the hydrological catchment of the Ramsar site through the production of wastewater and by increased surface flows over urban land. The assessment continued: “It cannot be concluded that the project will not adversely affect the integrity of the [Ramsar site], either alone or in combination with other plans or projects”. The Council calculated that the phosphorus loading of the proposed project was 41.19 kg/year and stated that no mitigation had been provided to offset that impact.

12. The inspector appointed by the Secretary of State to determine the appeal held an inquiry. On 24 November 2022 he issued his decision letter. He considered that, on its proper interpretation, the policy in para 181 of the NPPF applies at the discharge of

conditions stage. The Ramsar site was therefore to be accorded the same protection as a site covered by the Habitats Regulations (like the inspector, I will refer to this as “a European site”). He concluded that, in respect of such a site, regulation 63 of the Habitats Regulations would have required an appropriate assessment before the conditions attached to the reserved matters approval could be discharged. Despite the UK’s departure from the European Union, the Habitats Regulations were by virtue of provisions of the Withdrawal Act still to be interpreted in the light of the Habitats Directive which they were promulgated to implement and the case law of the CJEU interpreting that Directive, including in particular in light of the precautionary principle as a principle of EU law. The inspector dismissed an argument by the appellant that, by reason of the grant of outline planning permission and reserved matters approval for the development, it was not permissible to introduce at this stage, by the application of national policy, a requirement for an appropriate assessment before the conditions were discharged. He therefore dismissed the appeal.

13. The appellant brought a claim for statutory review in the High Court to challenge the inspector’s decision under section 288 of the TCPA 1990. By a judgment dated 30 June 2023 Sir Ross Cranston, sitting as a judge of the High Court, dismissed that challenge: [2023] EWHC 1622 (Admin); [2024] PTSR 184.

14. So far as is relevant to Issue 1, before the judge the appellant argued that in relation to a development like that in the present case, if it affected a European site, the Habitats Regulations only required (by virtue of regulation 70) an appropriate assessment to be carried out when outline planning permission was granted and had no application at the stage of consideration of discharge of reserved matters, since regulation 63, relied on by the inspector, did not cover that case. Under the Withdrawal Act the Habitats Regulations constituted retained EU law derived from the Habitats Directive, and the appellant accepted that the Regulations should be construed in light of the Directive and that principles of EU law governing the interpretation of EU legislative instruments such as the Directive (in particular the principle that a purposive interpretation should be applied and the precautionary principle in relation to environmental protection) were also applicable when interpreting the Habitats Regulations. But the appellant maintained that the wording of regulations 63 and 70 of the Habitats Regulations was clearly to the effect that it was only at the stage of the grant of outline planning permission (and not at the stage of consideration of reserved matters approval), that the Habitats Directive permitted such an approach to be adopted by member states, and that application of a purposive approach and the precautionary principle did not permit or require any modification of the natural textual meaning of that wording. The judge did not accept that argument. He held that the Habitats Directive and a purposive approach to the interpretation of the Habitats Regulations require the application of the assessment provisions to the discharge of conditions attached to reserved matters approval and that the precautionary principle would be undermined if the application of the assessment provisions was limited to the stage of the grant of outline planning permission: para 64.

15. So far as is relevant to Issue 2 the appellant argued that, even if it was wrong in its submission about the meaning of the Habitats Regulations, since the Ramsar site is not a European site and those Regulations do not apply to it there is no requirement in law that an appropriate assessment be carried out at the stage of consideration of reserved matters approval or the discharge of conditions attached to such approval; phosphate generation is outside the scope of the conditions attached to the grant of reserved matters approval in this case and is therefore not a matter which is a material planning consideration when deciding whether those conditions should be discharged, but rather is legally irrelevant to such a decision; and para 181 of the NPPF did not make an irrelevant consideration into a relevant consideration so as to enable the Council or the inspector to take phosphate generation and the Natural England advice into account when deciding whether the conditions attached to the reserved matters approval should be discharged. The judge rejected this submission as well, holding that if the conditions were discharged the consequence would be that a development with a potential detrimental impact on a Ramsar site protected by national policy would be authorised by the planning system, and “[t]hat creates the nexus to NPPF’s policy on the protection of Ramsar sites. It is open to the Secretary of State to introduce such a consideration as a matter of national planning policy”: [2024] PTSR 184, para 67.

16. The appellant appealed to the Court of Appeal. By a judgment of the court (the Senior President of Tribunals (Sir Keith Lindblom) and Singh and Arnold LJ) the appeal was dismissed ([2024] EWCA Civ 730; [2024] PTSR 2000).

17. As regards Issue 1, the court treated the Habitats Regulations and the principles of EU law governing the interpretation of the Habitats Directive and the Habitats Regulations as retained EU law within the meaning of the Withdrawal Act. They reviewed those principles of EU law and the case law of the CJEU which elucidated their application in relation to the Habitats Directive. In agreement with the judge they held that, properly interpreted, regulation 63 of the Habitats Regulations applied at the stage of consideration whether conditions attached to reserved matters approval should be discharged and that it required an appropriate assessment to be carried out before such discharge. The court held that ordinary principles of statutory interpretation in domestic law, which involve a purposive approach to construction of legislation (as stated in recent authorities including *UBS AG v Revenue and Customs Comrs* [2016] UKSC 13; [2016] 1 WLR 1005, para 62; *Uber BV v Aslam* [2021] UKSC 5; [2021] ICR 657, para 70 and *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 WLR 2594 (“*PACCAR*”), paras 40–41), led to this conclusion. Giving the words of regulation 63 their natural and ordinary meaning in the context of this legislation, they were capable of covering that stage in the planning process “[o]n a straightforward reading of the language used, having regard to that legislative purpose [of the assessment provisions]”, which is to avoid any risk of harm to the integrity of a protected site, “and to the underlying precautionary principle”; and “[a]ny other interpretation would ... be incompatible with the words of the provision, inconsistent with the legislative purpose and inimical to the precautionary principle”: para 75.

18. As regards Issue 2, the court held that the judge had been correct in his analysis. The policy in para 181 of the NPPF was engaged because of the connection between the consequence of discharging the conditions, namely to authorise Phase 3 of the development, and the object of the policy, namely to prevent harm to relevant protected sites: para 106. In the court’s view, in promulgating the policy in para 181 the Government had not usurped the role of the legislature by seeking to lay down new legal conditions; it had exercised its own proper role to lay down national planning policy, “which may then be a material consideration in decision-making”; and “[t]his was not to displace or override the provisions of the habitats legislation, which NPPF policy could not lawfully have done, but simply to establish as a matter of national planning policy that Ramsar sites were to have the same practical level of protection in planning decision-making as [European sites]”: para 108.

19. The appellant now appeals to this court.

The Town and Country Planning Act 1990

20. Section 70 of the TCPA 1990 governs the grant of planning permission by a local planning authority. Planning permission may be granted unconditionally or subject to conditions. Section 70(1) and (2) (as amended) provides in material part as follows:

“Determination of applications: general considerations.

(1) Where an application is made to a local planning authority for planning permission—

(a) subject to section 62D(5) and sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or

(b) they may refuse planning permission.

...

(2) In dealing with an application for planning permission ...

the authority shall have regard to—

(a) the provisions of the development plan, so far as material to the application,

(aza) a post-examination draft neighbourhood development plan, so far as material to the application,

(aa) any considerations relating to the use of the Welsh language, so far as material to the application;

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations.”

(In parallel with section 70(2), section 38(6) of the Planning and Compulsory Purchase Act 2004 – “the 2004 Act” – provides that where a planning authority is required to have regard to the development plan for the purpose of any determination to be made under the planning Acts “the determination must be made in accordance with the plan unless material considerations indicate otherwise”.)

21. Section 78(1) provides that where a local planning authority “refuse an application for planning permission or grant it subject to conditions” (paragraph (a)) or “refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grant it subject to conditions” (paragraph (b)) the applicant may appeal to the Secretary of State. Section 78(2) also provides for a right of appeal where a local planning authority fail to determine the application within a specified period. On an appeal, the Secretary of State may, among other things, deal with the application as if it had been made to him in the first instance: section 79.

22. Section 91 provides that, subject to certain exceptions, every planning permission which is granted is subject to the condition that the development to which it relates must be begun “not later than the expiration of ... the applicable period, beginning with the date on which the permission is granted” (subsection (1)(a)). In England, the applicable period is three years: section 91(5). That time limit does not apply to any outline planning permission: section 91(4)(g).

23. Outline planning permission is governed by section 92. So far as relevant, “Outline planning permission” means “planning permission granted, in accordance with the provisions of a development order, with the reservation for subsequent approval by the

local planning authority ... of matters not particularised in the application ('reserved matters')": section 92(1). Section 92(2) stipulates that where outline planning permission is granted for development consisting in or including the carrying out of building or other operations, it shall be granted subject to certain timing conditions, including that application for approval of any reserved matter must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission (paragraph (a)) and, in relation to land in England, that the development to which the permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters (paragraph (b)). Subsections (4) and (5) confer powers on the planning authority to vary those periods, and subsection (6) provides that in considering whether to exercise those powers "the authority shall have regard to the provisions of the development plan and to any other material considerations".

24. Section 336(1) defines various terms used in the TCPA 1990. So far as is relevant, "planning permission" is defined to mean "permission under Part [3] ... but does not include permission in principle". Part 3 is headed "Control over development". It includes the provisions set out above. Sections 70(1), 92(1) and 336(1) make it clear that outline planning permission is itself a form of planning permission governed by section 70(1).

The Habitats Directive and European case law

25. Article 6 of the Habitats Directive states:

"2. Member states shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

26. It is recognised in the case law of the CJEU and in domestic law that article 6(3) requires a strict “precautionary approach”. The case law was reviewed by the Senior President of Tribunals in *R (Wyatt) v Fareham Borough Council* [2022] EWCA Civ 983; [2023] PTSR 1952; [2023] Env LR 14, at para 9. The following points are relevant:

“(6) The requirement in the second sentence of article 6(3) of the Habitats Directive and in regulation 63(5) of the Habitats Regulations embodies the ‘precautionary principle, and makes it possible effectively to prevent adverse effects on the integrity of protected sites as a result of the plans or projects being considered’ (see the judgment of the CJEU in *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij* (Case C-127/02) [2005] All ER (EC) 353 (*‘Waddenzee’*), at para 58). The ‘precautionary principle’ requires a high standard of investigation (see the judgment in *Waddenzee*, at paras 44, 58, 59 and 61).

(7) ... The competent authority [responsible for considering whether to allow a development to proceed] must be ‘satisfied that there is no reasonable doubt as to the absence of adverse effects on the integrity of the protected site concerned’ (paras 44, 58, 59 and 61 of the CJEU’s judgment in ... *Waddenzee* ...).”

“(10) ... If an appropriate assessment is to comply with article 6(3) of the Habitats Directive it ‘cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned’ (see the judgment of the CJEU in *Sweetman v An Bord Pleanála* (Case C-258/11) [2014] PTSR 1092, at para 44, and its judgment in *People Over Wind v Coillte Teoranta* (Case C-323/17) [2018] PTSR 1668, at para 38).”

27. In *Holohan v An Bord Pleanála* (Case C-461/17) [2019] PTSR 1054, at para 33, the CJEU emphasised the rigour required in applying the “appropriate assessment” provision:

“Under article 6(3) of the Habitats Directive, an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved,

all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects ...”

28. The precautionary principle was explained further by the CJEU in its judgment in *Dutch Nitrogen* [2019] Env LR 27:

“99. ... [The] second stage of the assessment procedure, which is envisaged in the second sentence of article 6(3) of the Habitats Directive and occurs following the appropriate assessment of the implications of the plan or project for the site concerned, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned ...

100. Article 6(3) of the Habitats Directive thus integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects envisaged. A less stringent authorisation criterion than that in question could not ensure as effectively the fulfilment of the objective of site protection intended under that provision ...”

29. The meaning of the expression “agree to” in the second sentence of article 6(3) was considered by the CJEU in its judgment in *Inter-Environnement Wallonie ASBL v Conseil des Ministres* (Case C-411/17) EU:C:2019:622; [2020] Env LR 9 (“*Inter-Environnement Wallonie*”):

“140. The second sentence of article 6(3) of the Habitats Directive specifies that following an appropriate assessment, the competent national authorities are to ‘agree’ to the project only after having ascertained that it will not adversely affect the integrity of the site concerned

141. It follows that the assessment must be conducted before agreement is given.

142. Furthermore, while the Habitats Directive does not define the conditions governing how the authorities ‘agree’ to a given project under article 6(3) of that Directive, the definition of ‘development consent’ in article 1(2)(c) of the EIA Directive [the Environmental Impact Directive, Council Directive 85/337/EEC] is relevant in defining that term.

143. Accordingly, by analogy with the court’s findings on the EIA Directive, if national law provides for a number of steps in the consent procedure, the assessment under article 6(3) of the Habitats Directive should, in principle, be carried out as soon as the effects which the project in question is likely to have on a protected site are sufficiently identifiable.”

30. In *Friends of the Irish Environment Ltd v An Bord Pleanála* (Case C-254/19) EU:C:2020:680; [2021] Env LR 16, at paras 42 and 43, the CJEU repeated what it had said in *Inter-Environnement Wallonie*, para 142, about the relevance of the term “development consent” as defined in article 1(2)(c) of the EIA Directive as follows: “the decision of the competent authority or authorities which entitles the developer to proceed with the project”.

31. Under article 2(1) of the EIA Directive an environmental impact assessment is required before development consent is given. In *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (Case C-508/03) [2006] QB 764 and in *R (Barker) v Bromley London Borough Council* (Case C-290/03) [2006] QB 764, at paras 47–48, the CJEU held that where consent for a development is given in stages, by way of a principal decision (to grant outline planning permission) followed by a subsidiary decision (approval of reserved matters), an environmental impact assessment is required to be undertaken at the first stage when the environmental impact is capable of being assessed at that point, but if it was not undertaken then such an assessment will be required at the reserved matters stage where it appears the project will have an environmental impact.

The Habitats Regulations and domestic case law

32. The Habitats Directive was transposed into domestic law by the Habitats Regulations. The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The Explanatory Memorandum to those regulations made it clear that they were not intended to introduce any change in policy (para 2.4).

33. Regulation 3A of the Habitats Regulations (as amended) states that where the Habitats Directive is referred to it should be construed as if the United Kingdom were still a member state of the European Union.

34. Regulation 9(1) requires “the appropriate authority” to “exercise [its] functions which are relevant to nature conservation ... so as to secure compliance with the requirements of” certain specified Directives, which include the Habitats Directive. Regulation 9(3) requires a “competent authority, in exercising any of its functions” to “have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions”.

35. Part 6 of the Habitats Regulations contains provisions for the “Assessment of plans and projects”. Regulations 61 to 64 are in Chapter 1 of Part 6. Regulations 63 and 64 are defined in regulation 61 as “the assessment provisions”.

36. Regulation 62(1) states:

“(1) The requirements of the assessment provisions ... apply—
(a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions ...”

37. Regulation 63, entitled “Assessment of implications for European Sites and European offshore marine sites”, appears in the section of Part 6 headed “General provisions” and (together with regulation 64) in the subsection headed “General provisions for protection of European sites and European offshore marine sites”. Regulation 63 provides:

“(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

(a) is likely to have a significant effect on a European site ...
(either alone or in combination with other plans or projects),
and

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

...

(5) In the light of the conclusions of the assessment, and subject to regulation 64 [which provides for 'Considerations of overriding public interest'], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site ...

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given."

38. Regulation 70, entitled "Grant of planning permission", is in Chapter 2 of Part 6. It appears in a section headed "Planning" and a subsection headed "Planning permission". Regulation 70 provides:

"(1) The assessment provisions apply in relation to—

(a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);

...

(c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act ... in respect of such an application;

...

(3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site ... could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

39. In paragraph (3), ‘outline planning permission’ and ‘reserved matters’ have the same meanings as in section 92 of the TCPA 1990 (outline planning permission). Whether, in the absence of an appropriate assessment at the outline planning permission stage, such an assessment can properly be carried out at a later stage was considered by Lang J in *R (Wingfield) v Canterbury City Council* [2019] EWHC 1974 (Admin) (“*Wingfield*”) and by Holgate J in *R (Swire) v Canterbury City Council* [2022] EWHC 390 (Admin); [2022] JPL 1026 (“*Swire*”). Both judges referred to the speech of Lord Hope of Craighead in *R (Barker) v Bromley London Borough Council* [2006] UKHL 52; [2007] 1 AC 470, concerning the requirement for an environmental impact assessment under the EIA Directive, where he acknowledged (para 5) that it was “possible to conceive of cases where [the likely significant effects on the environment] only become apparent when consideration is being given to the reserved matters or where further consideration is necessary due to a material change in circumstances”. He went on to say (para 24):

“As the European Court ... said in para 48 of its judgment [in the *Barker* case], however, the competent authority may be obliged in some circumstances to carry out an [environmental impact assessment] even after outline planning permission has been granted. This is because it is not possible to eliminate entirely the possibility that it will not become apparent until a later stage in the multi-stage consent process that the project is likely to have significant effects on the environment. In that event account will have to be taken of all the aspects of the project which have not yet been assessed or which have been identified for the first time as requiring an assessment. This may be because the need for an [environmental impact assessment] was overlooked at the outline stage, or it may be because a detailed description of the proposal to the extent necessary to obtain approval of reserved matters has revealed that the development may have significant effects on the environment that were not anticipated earlier.”

At para 29 he said:

“If it is likely that there will be significant effects on the environment which have not previously been identified, an [environmental impact assessment] must be carried out at the reserved matters stage before consent is given for the development.”

40. In the light of these observations, in *Wingfield*, at para 69, Lang J rejected the suggestion that the only situation in which an environmental impact assessment might be required at the reserved matters stage was if the environmental effects of the development had not been identifiable at the outline permission stage and held that such an assessment “may also be required at reserved matters stage where the need for [it] was overlooked at the outline stage” (also citing *Cooper v Attorney General* [2011] QB 976, CA, paras 20–21 and 92, in support of this). She concluded (para 70) that in the case before her the need for an appropriate assessment under the Habitats Directive was overlooked at the outline permission stage; the Habitats Directive did not require that the assessment be carried out at the earliest possible stage (unlike the EIA Directive, as to which see *Preston New Road Action Group v Secretary of State for Communities and Local Government* [2018] EWCA Civ 9; [2018] Env LR 18, para 58), but was focused instead on the end result of ensuring the avoidance of harm to the integrity of protected sites (para 72), meaning that the grant of outline planning permission in the absence of an appropriate assessment was not itself unlawful; and in the circumstances the local planning authority could conduct an appropriate assessment under the Habitats Directive at the stage of considering approval of reserved matters (para 71).

41. Lang J referred (para 73) to the decision of the Court of Appeal in *No Adastral New Town Ltd v Suffolk Coastal District Council* [2015] EWCA Civ 88; [2015] Env LR 28 (“*No Adastral New Town*”), in which it was held that, unlike the EIA Directive, the Habitats Directive did not require an appropriate assessment to be carried out at an early stage, because article 6 of the Habitats Directive focuses on the end result of avoiding damage to a protected site and that objective could be achieved if such an assessment was conducted at the end of a multi-stage planning process before the project was implemented (see paras 61–69 per Richards LJ). Lang J concluded (para 74) that the date when a national competent authority “agrees” to the plan or project for the purposes of article 6(3) of the Habitats Directive is “the date of adoption of the decision authorising implementation of the project” (*European Commission v Germany* (Case C-142/16) EU:C:2017:301, at para 42), observing that:

“In a ‘multi-stage consent’ there is no ‘agreement to the ... project’ until reserved matters consent has been granted; indeed the CJEU described the reserved matters approval as ‘the implementing decision’ in *Wells* [*R (Wells) v Secretary of State for Transport, Local Government and the Regions* (Case C-201/02) [2004] ECR I-723] at para 52 and *Commission v UK* [2006] QB 764 at paras 101, 104. By regulations 63(1) and

63(5) [of the Habitats Regulations], reserved matters consent cannot be granted unless it has been established that the integrity of the European site will not be adversely affected. So an [appropriate assessment] was required.”

(The Court of Appeal refused permission to appeal, including upon a reconsideration, but it relied primarily on Lang J’s further reasoning that even if an appropriate assessment had been conducted before the grant of outline planning permission it would have made no difference: [2020] EWCA Civ 1588; [2021] 1 WLR 2863).

42. In *Swire* [2022] EWHC 390 (Admin) the claimant in judicial review proceedings challenged, among other things, a local planning authority’s decision in 2021 to give reserved matters approval, under an outline planning permission granted in 2018, for the masterplan for a development near protected European sites. This was on the basis that, although an appropriate assessment under the Habitats Regulations had been carried out prior to the grant of the outline planning permission, no further appropriate assessment had been carried out under the Habitats Regulations subsequent to the issuing of the Natural England advice about the potential effects of wastewater discharges on such sites. That advice represented a change of stance by Natural England which was materially relevant to the integrity of the sites, raising an issue which had not been adequately addressed by the previous appropriate assessment. However, the local planning authority was going to conduct a further appropriate assessment in relation to applications for approval of other reserved matters which would address that issue. At paras 94 and 95 Holgate J interpreted the Habitats Regulations in the same way as in *Wingfield* and *No Adastral New Town*: the later proposed consideration whether to give reserved matters approval would be the relevant implementing decision which allowed the development to proceed and there would be compliance with the Regulations if an appropriate assessment addressing the wastewater issue was conducted prior to the giving of such approval, there being no requirement that the appropriate assessment be carried out at the earliest possible stage.

Issue 1: Interpretation of regulation 63 of the Habitats Regulations

43. The Habitats Regulations are, of course, binding law in relation to planning for development which may affect a European site to which they apply. As explained above, they do not apply to the Ramsar site in this case. However, para 181 of the NPPF depends upon the interpretation of the Habitats Regulations. The interpretation of the Habitats Regulations was thus a critical point in the reasoning of the judge and the Court of Appeal and they gave very full judgments on the issue. As appears from my discussion of Issue 2 below, this is not a critical point in my reasoning. However, we heard full argument on the point and if we considered that the judgments below were in error on it, it would be desirable that we should correct them since the Habitats Regulations apply in many

situations. I therefore consider that it is appropriate that this court should deal with this issue.

44. In my view, the Court of Appeal interpreted regulation 63 of the Habitat Regulations correctly. They were right to conclude that this interpretation was required by application of ordinary domestic principles of statutory interpretation.

45. In relation to those principles, the Court of Appeal cited a range of relevant authority (see para 17 above) which emphasises that a purposive approach should be adopted. This is encapsulated in the oft-cited statement of Lord Bingham of Cornhill in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13; [2003] 2 AC 687, at para 8:

“The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

This is as relevant to the interpretation of subordinate legislation such as the Habitats Regulations as to the interpretation of primary legislation. In the former case it is the purpose of the relevant legislator – typically a Secretary of State acting under a power conferred by Parliament – which matters.

46. In this case the Court of Appeal correctly observed ([2024] PTSR 2000, para 68) that there is no dichotomy between looking at the natural and ordinary meaning of legislation and a purposive approach to construction. The authorities make it clear that the correct approach is that legislation must be construed having regard to its context and in the light of its purpose. “The purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it”: *PACCAR* [2023] 1 WLR 2594, para 41.

47. The historical context which led to the enactment of the Habitats Regulations was the intention to give effect in domestic law to the regime set out in the Habitats Directive. The object of that Directive was to ensure a high degree of protection for vulnerable habitats and sites of various kinds as identified for the purposes of the Directive, and to ensure careful scrutiny of development proposals likely to have an impact on such habitats and sites with a view to minimising or avoiding such impact. This is made clear by the recitals to the Directive and by its operative terms.

48. The recitals to the Habitats Directive state:

“... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community ...

... it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued ...

... an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future ...”

49. Article 2(1) states that the Directive’s aim is “to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora” and article 2(2) states that measures taken pursuant to the Directive “shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora”. Article 6(2) requires member states to take appropriate steps to avoid the deterioration of protected habitats; and article 6(3) (para 25 above) makes it clear that the point of an appropriate assessment is to equip the relevant authority with information to enable it to comply with its obligation to “agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned”.

50. Further, it is well established in the European case law reviewed above that the Habitats Directive has to be interpreted in light of the precautionary principle, which again aims to ensure that vulnerable sites are accorded a high degree of protection. In substance, the precautionary principle reflects and gives expression to the purpose of the Directive.

51. The purpose of the Habitats Regulations is to implement and follow the Habitats Directive in pursuing the same objective. Brexit has made no difference to this. There is nothing in the Withdrawal Act which affects the application of ordinary domestic law principles of interpretation so far as the Habitats Regulations are concerned. Although the Court of Appeal referred to provisions of the Withdrawal Act it is not necessary to examine them in this judgment since it is not suggested that the outcome of the appeal depends upon them.

52. Lord Banner KC, for the appellant, did not dispute in this court that we should interpret the Habitats Regulations purposively, having regard to these objectives, and

having regard to the precautionary principle. Nor did he dispute these points in the courts below. His submission is that even applying the purposive approach and the precautionary principle, the wording of regulation 70 is clearly to the effect that an appropriate assessment is only to be carried out at the stage when planning permission is granted (including when outline planning permission is granted) and that the Court of Appeal erred in construing regulation 63 as conferring a power or imposing a duty for a planning authority to carry out an appropriate assessment at a later stage of the planning process, such as when considering whether to give reserved matters approval or to discharge conditions attached to a reserved matters approval. He places emphasis on the statement in regulation 62 that “the assessment provisions” (that is, as defined in regulations 61, 63 and 64) apply “subject to and in accordance with the provisions of” Chapter 2, which includes regulation 70.

53. In my judgment this submission is unsustainable. Regulation 70(1) states positively, in the section of the Regulations dealing with planning permission, that the assessment provisions apply in relation to the grant of planning permission. But it does not say, in negative terms, that they do not apply in relation to any other stage of the planning process where it may be appropriate for them to operate in order to fulfil the purposes of the Habitats Regulations and to respect the precautionary principle.

54. Regulations 63 and 64 are grouped together under the heading “General provisions for protection of European sites and European offshore marine sites” and they are expressed in clear, self-contained terms setting out relevant powers and obligations which arise under them. That heading indicates that they are to have general effect in relation to the relevant sites. In line with that indication, regulation 63(1) uses entirely general language to indicate when the obligation to make an appropriate assessment which it sets out applies, that is to say “before deciding to undertake, or give any consent, permission or other authorisation for” a relevant plan or project. That is not language capable of being limited to the grant of planning permission. On the contrary, as the Court of Appeal rightly observed, the language is deliberately broad in its effect and, having regard to the way in which the planning system works in the context of the multi-stage planning regime of the kind operated in the present case, the words “or other authorisation” naturally cover a decision to give approval for reserved matters or to discharge conditions attached to a reserved matters approval which would have the effect of authorising the developer to proceed with the development.

55. Regulation 62(1) (para 36 above) does not support Lord Banner’s submission. In my opinion this provision undermines the submission. The opening words of the provision indicate and acknowledge that the assessment provisions set out “requirements”, so it is natural that the content of those requirements should be determined by reading regulations 63 and 64 according to their own terms. Regulation 62(1)(a) and (b) stipulates specific qualifications on the application of the assessment provisions: in the case of paragraph (a), that they should apply “subject to and in accordance with the provisions of Chapters 2 to 7”, but only “in relation to the matters

specified in those provisions”. The operation of the later stages of a multi-stage planning process, after the grant of outline planning permission, is not a matter specified in those provisions. Therefore the wording of regulation 62(1) indicates that a deliberate choice has been made that the assessment provisions should have general application in relation to matters not so specified. Regulation 62(1) does not say that the assessment provisions apply only in relation to the matters so specified, which is in effect the meaning which Lord Banner sought to extract from it.

56. It is clear that the protective purpose of the Habitats Regulations and the precautionary principle would be defeated, rather than promoted and respected, if the Regulations are read as precluding any opportunity for an appropriate assessment to be carried out at a later stage in a multi-stage planning process, such as that in issue in the present proceedings, where the planning authority has for any reason (eg by oversight, misinterpretation of the law or being ignorant of relevant science or misunderstanding that science) failed to carry one out at the stage of assessing whether to grant outline planning permission. Therefore, in a case involving a potential impact on a European site where the Habitats Regulations have effect, application of a normal purposive approach to their interpretation and having regard to the precautionary principle leads to the conclusion that regulation 63 would apply to a decision to give reserved matters approval or to discharge conditions attached to such an approval where that would result in authorisation for the project to proceed. Giving the words of regulation 63 their ordinary and natural meaning in the context in which they appear leads to this result.

57. This conclusion on the interpretation of the Habitats Regulations accords with the reasoning in *No Adastral New Town*, *Wingfield* and *Swire*, above, which on this point I would endorse, in agreement with the Court of Appeal (para 78). I leave aside the distinct question raised in those cases whether there is an obligation to conduct an appropriate assessment under the Habitats Regulations at the earliest opportunity. That question does not arise in this appeal and we did not hear submissions on it, since the Natural England advice constituted new scientific information which was not available to be taken into account when outline planning permission was granted in 2015. The Council and the inspector took that advice into account at the first opportunity in the multi-stage planning process followed in this case.

58. Lord Banner sought to draw support for his submission under Issue 1 from aids to interpretation which might have been relevant if the Habitats Regulations were ambiguous in some relevant respect. It is not necessary to go into this because the Regulations are not ambiguous. They are clear in their effect.

59. The Court of Appeal rightly reached their conclusion on Issue 1 by following normal domestic principles of interpretation: [2024] PTSR 2000, paras 66–97. As they observed (para 97) it was unnecessary for the judge to refer to the principles of interpretation in EU law because the Habitats Regulations are to be construed as having

the meaning he gave them simply by applying the conventional approach to statutory interpretation in domestic law, which includes the purposive approach. Despite this the Court of Appeal discussed the effect of the Withdrawal Act in obiter dicta in some detail (paras 37–53). It is not necessary for this court to deal with this part of their judgment; nor did we receive submissions which would assist us to do so. The points made in the judgments of the CJEU and the domestic courts referred to above are relevant because they serve to emphasise the purposes promoted by the Habitats Directive and the Habitats Regulations, which are already clear from the terms and context of those instruments.

Issue 2: Outline planning permission, reserved matters approval, discharge of conditions and national policy

60. Although I would dismiss the appeal in relation to Issue 1, I would allow it in relation to Issue 2. In my view the judge and the Court of Appeal erred in giving a statement of policy (in para 181 of the NPPF) the same status and force as a legal rule set out in legislation (in regulation 63 of the Habitats Regulations) in respect of the decision in this case whether to discharge the conditions attached to the reserved matters approval in relation to an outline planning permission. They failed to take into account the nature of the rights conferred on the appellant by the grant of such permission.

61. National planning policy bearing on a relevant factor in respect of a proposed development is plainly a “material consideration” within the meaning of section 70(2)(c) of the TCPA 1990 (para 20 above) and section 38(6) of the 2004 Act in relation to a decision whether to grant planning permission (including outline planning permission) at the start of the planning process: *Elsick Development Co Ltd v Aberdeen City and Shire Strategic Development Planning Authority* [2017] UKSC 66; [2017] PTSR 1413, para 53. At that stage a developer is asking the planning authority to exercise its discretion to grant permission to proceed with a development and has acquired no right to do so. Therefore, having regard to the national policy in para 181 of the NPPF, Mr Richard Moules KC, who presented the submissions of the respondent Secretary of State on Issue 2, correctly submits that the impact on a Ramsar site can be a material consideration when deciding whether to grant planning permission. Similarly, national planning policy is a “material consideration” within the meaning of section 92(6) to which regard should be had when a planning authority considers whether to exercise its powers under section 92(4) or (5) to adjust the conditions attached to an outline planning permission setting the timeframe within which certain steps should be taken to operate the multi-stage planning process under that permission.

62. However, when planning permission is granted there is a fundamental change in the legal position, in that it creates rights under the planning legislation for the developer to develop land in accordance with the permission. Those rights are not made defeasible depending on government policy. That is true both in respect of a grant of full planning permission and in respect of a grant of outline planning permission (which, as observed

above, is itself a grant of planning permission, albeit one subject to conditions). Rights given by the planning legislation cannot be overridden or diluted by general policies laid down by central government, whether in the form of the NPPF or otherwise: *R (Wright) v Forest of Dean District Council* [2019] UKSC 53; [2019] 1 WLR 6562, para 42.

63. The Court of Appeal, [2024] PTSR 2000, para 108, correctly noted as a point of principle that government policy could not alter the application of legislation, referring to the habitats legislation. However, the importance of this principle in the present case is in relation to the operation of the planning legislation, which the Court of Appeal did not consider in this part of their judgment.

64. Where an application for full planning permission is approved by a local planning authority they “grant planning permission” (section 70(1)(a)), which means that they give legal permission for the development referred to in the application to proceed. This has the effect of conferring a right on the developer, for the purposes of the planning legislation, to develop its land in accordance with the permission which has been given. Assuming that this permission is not set aside in legal proceedings brought to challenge it on the grounds of some legal flaw, that right is not defeasible. The developer may proceed with the development within the time allowed under section 91 of the TCPA 1990 without fear of enforcement action being taken against it. If the planning authority has a change of mind and wishes to revoke or modify the permission, it has to pay compensation: section 107 of the TCPA 1990.

65. This scheme reflects the basic nature of the planning regime, which combines action by private landowners in developing their land with public regulation through the planning system to encourage them to do that in particular ways in the public interest and provides for enforcement controls if they proceed with development without permission. If landowners are to be incentivised to proceed with developments which are encouraged by the planning regime through development plans and local and central government policies, they need assurance that the costs they incur in carrying out a development will not be lost. The grant of planning permission gives them that assurance. Once granted, a developer knows where it stands and that it can incur costs to proceed with the development within the timetable set by the legislation without fear that they may be lost by reason of a change of position by the regulating authority. So, for example, if planning permission has been granted after completion of all relevant checking processes it would not then be open to the planning authority to revoke the permission (without payment of compensation) because of a change in government policy or a change in scientific advice, such as that set out in the Natural England advice. The grant of planning permission locks in the right of the developer to proceed with the development for which permission has been given.

66. Turning to a grant of outline planning permission, which is a form of planning permission, the analysis is the same, with due allowance for the fact that the permission

granted is conditional in various ways. The conditions specify in binding legal form the particular areas where the developer will need to satisfy the planning authority of certain matters before the development can proceed, and in this way they allow the developer to know where it stands in calculating whether it can safely incur costs in carrying the project forward. The stipulated conditions delimit the extent of the risk the developer takes in doing so. The extent of the conditionality of the permission which has been granted is determined by a fair and objective reading of the conditions imposed, by asking what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and the planning consent as a whole: *DB Symmetry Ltd v Swindon Borough Council* [2022] UKSC 33; [2023] 1 WLR 198, para 66. Except to the extent that the permission is made conditional according to the terms on which it is granted under section 70(1) of the TCPA 1990, it is a grant of full permission to proceed with the development. The imposition of a condition that, say, the planning authority has to agree a scheme for tree protection (condition 3 in the outline planning permission in the present case) is confined to consideration of matters fairly related to that subject matter; it does not import a general power for the planning authority to refuse to give approval for a perfectly acceptable tree protection scheme in order to further some other purpose or policy objective. And where approval for reserved matters in an outline planning permission is given subject to further conditions (which I will call sub-conditions), those sub-conditions have to fall within the ambit of the reserved matters as defined by the conditions set out in the outline permission. The planning Acts contain no general power to revoke or modify the conditions set out in the outline permission, unless compensation is paid pursuant to section 107 of the TCPA 1990.

67. Lord Morris of Borth-y-Gest referred to these points in *Kingsway Investments (Kent) Ltd v Kent County Council* [1971] AC 72, at p 96, where he explained that if outline planning permission is granted subject to approval of reserved matters “the applicant clearly knows that that permission is conditional and that it will be of no use to him until he is able to submit details” in respect of those matters which are acceptable to the planning authority, and said “[i]t must, of course, be assumed that the authority will act in good faith. They must not misuse their functions so as indirectly and without paying compensation to achieve what would amount to a revocation or modification of a permission already given”. This is simply another way of saying that once outline planning permission is granted subject to defined conditions, the planning authority is bound by those conditions and has to act properly in accordance with them when deciding whether to give approval as required under them. As Lionel Read QC, sitting as a High Court judge, stated in *Camden London Borough Council v Secretary of State for the Environment* [1993] JPL 466, 470, the power of a planning authority under a planning condition to refuse approval in respect of a project for which outline planning permission has been given is limited by the terms of that condition, and the planning authority has to determine an application for approval of a reserved matter “within the terms of the condition”.

68. In line with this approach, Mummery LJ’s analysis in *Redrow Homes Ltd v First Secretary of State* [2004] EWCA Civ 1375; [2005] JPL 502, paras 22–30, on the question

whether approval for reserved matters should be given was rightly directed to the construction of the condition included in the outline planning permission, unaffected by planning considerations of a general nature applicable at the time when such approval was sought. As he pointed out (para 27), if there has been a substantial change in relation to the general planning context by the time such approval is sought, that may “afford grounds for invoking appropriate procedures for the revocation or modification of [the outline planning permission]”, which might lead to a right of compensation for the developer; but that does not affect the construction of the condition set out in the planning permission nor the obligation of the planning authority to honour that condition according to its terms.

69. Where an outline planning permission has been granted it is not open to a planning authority to revisit matters which have been approved in principle at the outline stage; and some element of development must be acceptable on the site within the ambit of the outline permission: see *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 15; [2021] PTSR 1054, para 17, and *Swire* [2022] JPL 1026, para 11. Where an outline permission reserves matters for the subsequent approval of a local planning authority, the extent to which the authority can withhold approval is restricted to what has been expressed to be so reserved and it is not permitted to go back on points of principle which it has accepted by granting permission: *Shemara Ltd v Luton Corpn* (1967) 18 P & CR 520, 524, per Diplock LJ (sitting as a judge of the High Court); *Lewis Thirkwell v Secretary of State for the Environment* (1978) JPL 844, 847; *Proberun Ltd v Secretary of State for the Environment* (1990) 61 P & CR 77, 85 (Glidewell LJ); *R v Newbury District Council, Ex p Chieveley Parish Council* [1999] PLCR 51, CA, 64 (Pill LJ); *Redrow Homes* (above), paras 22–30. In the present case, however, the Council and the inspector relied on the policy in para 181 of the NPPF and the new scientific advice given by Natural England to revisit matters which had been approved at the outline stage and did so in a way which could potentially eliminate the possibility of any development taking place within the ambit of the outline permission which had been granted, if approval were withheld because of a negative view formed in the course of carrying out the appropriate assessment.

70. Therefore, it was not open to the Council or the inspector in the present case to use the fact that the outline planning permission was granted subject to conditions requiring approval to be given by the planning authority for certain matters, and that such approval had not been given outright but subject to sub-conditions within the ambit of the main conditions set out in the outline permission, as a basis to say that, before those sub-conditions were discharged so that the development could proceed, some additional measures to promote a different objective (ie the protection of the Ramsar site) should be taken. The planning legislation gave them no power to do that, unlike the position in relation to a European site, where the Habitats Regulations apply. National policy and new scientific advice of the kind in issue in this case do not confer such a power, because the operation of the conditions set out in the outline planning permission (and hence of the sub-conditions set out in the reserved matters approval) is determined by the

interpretation of the conditions set out in the outline permission; and they allow no reference to such an objective. (By contrast, a planning authority would be entitled, and may be required, to have regard to a national or local policy directed to the substance of the condition in question, eg, taking the example of condition 3, a policy on the best way to ensure that trees are protected).

71. Mr Moules relied on the judgment of Timothy Corner KC (sitting as a Deputy High Court Judge) in *R (Whiteside) v London Borough of Croydon* [2023] EWHC 3289 (Admin) in support of his submission that it is permissible for a planning authority considering whether to grant approval for reserved matters under a condition in a planning permission to have regard to a wider range of considerations than is indicated by construction of the condition itself. However, that case was concerned with a distinct issue, very different from that which arises in this appeal.

72. So far as is relevant, the planning permission which was granted for residential development in that case included two conditions (condition 14, requiring the residential units to be accessible to a particular standard, and condition 18, requiring approval of a plan for finished land levels). Such a plan was submitted by the developer and approved by the planning authority, which discharged condition 18. But the plan was not consistent with ensuring that the accessibility requirement in condition 14 was fully met. The judge held that this feature of the case was a relevant matter which should have been taken into account when considering the discharge of condition 18 according to the test of whether the application to discharge was “satisfactory”: paras 50 and 55–56 (in the event, the judicial review to challenge the discharge failed because, if this had been taken into account, the result would have been the same). The judge distinguished, and did not question, authority which held that a condition reserving a particular matter could not be used to refuse a scheme for reasons which had nothing to do with that matter (which is to say, the present case), and emphasised that the planning authority was “dealing with the planning permission as a whole”, meaning that it was a relevant consideration that the whole permission should be operated in a coherent way which gave due effect to each part of it. The planning authority could not undermine a condition on which the permission it had granted was predicated by ignoring it. That approach is unsurprising but has no relevance to the determination of this appeal. The case cannot bear the weight which Mr Moules sought to place on it.

Conclusion

73. For the reasons given above I consider that the Court of Appeal was correct in its interpretation of the Habitats Regulations and that the appeal in relation to Issue 1 should be dismissed. However, I would allow the appeal in relation to Issue 2.