



Appeal number: NV.2015.0002

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**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
ENVIRONMENT**

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Forager Limited

Applicant

- and -

Natural England

Respondent

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TRIBUNAL: JUDGE HUGHES

**RULING ON APPLICATIONS TO SET ASIDE, OR REVIEW THE
DECISION AND FOR PERMISSION TO APPEAL**

20 1. **The applications are refused**

REASONS

2. On 30 April 2015 Natural England served a Stop Notice on Forager Ltd. in
connection with its trespassory activities on a Site of Special Scientific Interest. The
25 notice required it to stop “*Sea kale harvesting, including the cutting of sea kale plants,
and the collection of parts of sea kale plants including leaves and seeds*”. The First-
tier Tribunal (the tribunal) upheld the Stop Notice. On appeal the Upper Tribunal
upheld the Stop Notice but found that it should have contained the steps the Forager
Ltd. was required to take in order to come into compliance and so be able to apply for
30 a completion certificate; following the issuing of a completion certificate the Stop

Notice would cease to have effect. The question of what those steps should be was remitted to the First-tier Tribunal.

3. Following a hearing the tribunal at which alternative proposals were put forward by Natural England and Forager Ltd the tribunal decided that the steps were:-

5 *“EITHER by obtaining owner/occupier status for the relevant area OR in co-operation with an owner/occupier of the relevant area, gain consent from Natural England for the harvesting of sea kale leaves in respect of that area”*

The Application for Permission to Appeal

10 4. The grounds of appeal make claims of errors of law in the decision. The first is that the tribunal erred in holding that the cutting of vegetation on an SSSI by a non owner or occupier is an offence under the Wildlife and Countryside Act. The difficulty with this assertion is that the Upper Tribunal upheld the decision of the original tribunal on this point (UT decision paragraph 43):-

15 *“I agree with Mr Maurici that the offence would be committed by intentionally or recklessly destroying or damaging any of the relevant flora and fauna etc. The First-tier Tribunal could have expressed its reasoning more broadly but there can be no possible doubt that, on the evidence, the First-tier Tribunal was entitled to conclude that the activities would be likely to involve the commission of the relevant offence.”*

20 5. The second ground was that theft and trespass had no relevance to the proceedings. This is inconsistent with the findings of fact made by the tribunal in its original determination and in its subsequent decision. This tribunal found (paragraph 51):-

25 *“Knowledge of the illegality of its actions affected the way its employees conducted their harvesting of sea kale on this site; they hurried and cut corners so as to be away before they could be stopped, identified or conceivably arrested. Without the consent of the owner their future activities would be similar and they would be unable to carry out harvesting in the more measured and careful way as the company claimed it intended to do in future.”*

The first tribunal found (paragraph 155):-

30 *“Employees are sent to harvest sea kale with inadequate training and supervision. They would be highly likely to be working at speed, whether because (according to Mr Irving) they would not wish to encounter the site warden or (more likely) because they would be engaging in trespassory activities. The appellant is, in short, reasonably likely to carry on the activities described in the Stop Notice.”*

35 6. The third ground is that the tribunal did not have sufficient evidence. The weight to be accorded to any particular evidence, its relevance and reliability are all matters of fact for the tribunal to consider in coming to its conclusions. The questions of fact relevant to this case were for the tribunal to decide and the conclusions have been explained to the standard required by law

7. The fourth ground asserts an error of law with respect to the Habitats Regulations. Forager Ltd. repeats its argument that there should be permission to carry out harvesting which it claims is not caught by the provisions of the Habitats Regulations. This is simply to re-argue factual issues decided by the tribunal and is not a point of law. Forager Ltd. further asks the tribunal to provide guidance on the possible appeal procedures. That is a matter for Forager Ltd. and its advisers.

8. The fifth ground claims an error of law with respect to Stop Notices and argues that since the step proposed cannot be complied with by Forager Ltd. without the co-operation of others it is unreasonable. There is no reason in law why the step should be such as can be complied with unilaterally, the steps require Forager to make an application supported by the relevant information. Whether the consent is then granted is a matter for Natural England as competent authority.

Ruling

9. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the Tribunal’s Decision but have decided not to undertake a review, as I am not satisfied that there was an error of law in the Decision.

10. Appeals from the First-tier Tribunal to the Upper Tribunal can only be made if there is an arguable error of law in the First-tier Tribunal’s decision. Rule 42 of the Tribunal’s Rules requires a person requesting permission to appeal to identify an alleged error of law in their application for permission to appeal. It is not possible to appeal simply because you do not agree with the Tribunal’s decision.

11. I have considered whether the grounds of appeal identified above are *arguable*. This means that there must be a realistic (as opposed to fanciful) prospect of success – see Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538. I have concluded that the grounds are not arguable for the reasons stated above.

12. The Applicant is entitled to renew its application to the Upper Tribunal.

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DATE: 8 March 2018
JUDGE HUGHES