



**First-tier Tribunal
(General Regulatory Chamber)
Environment
Cost Recovery Enforcement Notices 9 January 2020**

Appeal Reference: NV/2020/008 and 0012

Before

JUDGE CHRIS HUGHES

Between

**MR STEVEN CHAPLIN (NV.2020.0008) AND OVERTON (GLOUCESTER)
LIMITED (NV.2020.0012)**

Appellants

and

NATRUAL ENGLAND

Respondent

Representation

Appellants: Mr Chaplin

Respondent: Mr May-Smith

DECISION

1. The appeals are without merit and are dismissed.

Background

1. Mr Chaplin is the owner and director of the company Overton (Gloucester) Limited accordingly Mr Chaplin controls and is responsible for the company. For the purpose of this decision the Appellants are referred to as "Mr Chaplin".

2. A field was surveyed in 2014 and found to meet the criteria for listing as a Site of Special Scientific Interest. Mr Chaplin bought the field in 2017 and ploughed the land. Natural England served a screening notice under the Environmental Impact Assessment (Agriculture) (England) (No2) Regulations 2006 on 1 February 2018 to prevent further improvement. Natural England then negotiated a voluntary restoration with Mr Chaplin reflecting his preference for sowing a seed mix rather than allowing it to re-seed. In the light of the screening notice an application to Natural England was required under Regulation 4 (2):- *“ A person must not begin or carry out any uncultivated land project or restructuring project on land to which a relevant screening notice applies unless he has first obtained a screening decision permitting the project to proceed.”* He did not do so and in September 2018 Natural England discovered that the field had been harrowed. A Stop Notice was served on 24 September and on 28 September he signed an Enforcement Undertaking to formalise the position. The Stop Notice was withdrawn.
3. Mr Chaplin was served with a notification under s28 of the Wildlife and Countryside Act 1981 on 10 January 2019 of a Site of Special Scientific Interest, Oridge Street Meadows, which included the field.
4. As part of the notification process he was supplied with details of “Operations requiring Natural England’s Consent”. The notification explained (bundle A85-89):

“Before any of these operations are undertaken you must consult Natural England and may require our consent. It is usually possible to carry out many of these operations in certain ways, or at specific times of year, or on certain parts of the SSSI, without damaging the features of interest. If you wish to carry out any of these activities, please contact your Natural England Area Team who will give you advice and, where appropriate, issue consent. Please help us by using the ‘notice form’ (provided at notification and available on request) to ask for consent to carry out these operations. In certain circumstances it will not be possible to consent these operations, because they would damage the features of interest. Where possible the Area Team will suggest alternative ways in which you may proceed, thereby enabling consent to be issued. To proceed without Natural England’s consent may constitute an offence. If consent is refused, or conditions attached to it, which are not acceptable to you, you will be provided with details of how you may appeal to the Secretary of State.”

5. Among the operations listed were:-

“4. Mowing or cutting vegetation and alterations to the mowing or cutting regime (such as from haymaking to silage).

8. Burning

11. Destruction, displacement, removal or cutting of any plant or plant remains, including tree, shrub, herb, hedge, dead or decaying wood, moss, lichen, fungal fruiting-body, leaf-mould or turf.

12. *Tree and/or woodland management and alterations to tree and/or woodland management (including planting, felling, pruning and tree surgery, thinning, coppicing, changes in species composition, removal of fallen timber).*
26. *Use of vehicles or craft."*

6. Mr Chaplin was therefore given notice of the extent of their responsibility to seek and obtain consent from Natural England before carrying out these operations and that not to do so could attract criminal liability.
7. On 15 July Mr Chaplin's agent (Mr Daniell) applied to Natural England on his behalf for consent to make hay in the field, consent was received the same day.
8. Mr Chaplin appealed to the Board of Natural England against the notification at a meeting of the Board on 11 September 2019. In addition to arguing that the current condition of the land did not justify designation, his representative (Mr Daniell) argued about the need for to obtain consent before carrying out operations:-

"A further point we would like to make is about the proposed list of operations requiring consent. This list is overwhelming. ... driving a vehicle on to there, you would have to get consent. For all intents and purposes, my client will only be able to do what Natural England want him to do" and we take this against the possibly questionable justification in the first place.

9. On 27 September an officer of Natural England observed hedge-cutting taking place in the field. On 8 October Natural England's witness (Mr Horswill) wrote to Mr Chaplin:-

"I am writing to you in relation to the recent hedge cutting carried out in the northern field you own within Oridge Street Meadows Site of Special Scientific Interest (SSSI).

....

Oridge Street Meadows is protected by the provisions of Part II of the Wildlife & Countryside Act 1981 ("the Act"). Section 28E of the Act prohibits owners of SSSIs from carrying out any operations specified in the list of operations requiring Natural England's consent. Hedge cutting is included within this list (see operation reference number 11). We note that you have previously sought and obtained our consent for cutting hay. The same procedure is required for hedge cutting.

Natural England has decided not to take further enforcement action on this occasion. However we would appreciate you or your agent making contact with Peter Holmes to discuss a management plan for the northern field. This will ensure that activities such as hedge cutting are carried out in accordance with the Act and in ways that will conserve and enhance the biodiversity of the site."

10. On 23 October Natural England was informed that a hedge had been removed and material was being burnt on the site. The following day an Officer of

Natural England spoke to Mr Chaplin about operations in the field. Her telephone attendance note sent to colleagues (timed at 10.56am) records:-

"Subject: Re: VERY URGENT: Oridge Street Meadows

Hi All

I spoke to the owner this morning to ask that activity stops and to let him know the activities required consent, and we would be contacting him shortly in writing. He said he would move the digger and burning to adjacent field but this was all very tiresome and he might just sell it.

Thanks"

11. The case for Natural England confirmed the sequence of events :-

"On 23 October 2019 we received a report from a local resident that a hedge had been removed and material was being burnt within the field.

We attended the field on the same day the hedges were in the process of being cut (mechanically using a vehicle) we observed large piles of brash within the field, lying on top of the grassland, some of which were on fire. We also observed that a Land Rover was in the field and there was damage to the grassland caused by tire marks.

On 24 October 2019 a Natural England staff member spoke to Mr Chaplin. He agreed to remove the brash burning to a different field but gave no commitment to stop the hedge cutting or vehicle use."

12. On 25 October Natural England served Stop Notices under the Regulatory Enforcement and Sanctions Act 2008, Section 46, Environmental Civil Sanctions (England) Order 2010 and the Wildlife and Countryside Act 1981 on both the company and the controlling director. The notice required the immediate cessation of various activities, in particular it required the immediate cessation of:-

"Vehicle use, save insofar as is necessary to remove cut vegetation already in existence on the site, including brash from the SSSI in accordance with a method agreed with Natural England;

Dumping or storage of cut vegetation including brash on the SSSI beyond 31 October 2019;

Hedge removal, cutting or other damage to hedges

Burning vegetation beyond 25 October 2019"

13. On 28 October a Natural England officer visited the field and described the situation:-

"I arrived maybe at 11.45. someone was working in the northern point of the field. I wandered along the road verge and, without entering the meadow, had a chat. He was a hedgelayer. He was clearing materials off the field (his vehicle was parked outside the field). Also the hedge had been cut all the way along the road as far as the village of Staunton (it's only one big field away). He said, in relation to the SSSI field, that he

was going to continue the hedgelaying tomorrow and Wednesday, so work was going to continue within the SSSI – would this be in breach of the Stop notice?...”

14. On 9 January 2020 Natural England served Cost Enforcement Notices on both the company and the director in two equal sums of £1,675.68. Mr Chaplin has lodged appeals against both cost enforcement notices:-

*“Firstly I appeal to the claim for costs against both myself and overton Gloucester. Secondly I strongly deny any of the claims made that the action of laying a hedge was in any way damaging to the protection of this area/field
Any damage to the field was very much surface traffic whilst laying the hedge, this can no longer be seen as the grass grows and the hedge shoot fresh and green.”*

15. In support of the appeals Mr Chaplin submitted a letter from the contractor for Gloucester Highways dated 10 July 2018 requesting him to remove or prune dead and dying trees which had the potential to collapse onto the highway and *“for works to be completed by the end of September 2018 or booked to be completed soon after”*.

16. In his detailed response Mr Chaplin argued that the field should not have been designated as an SSSI because it had been ploughed in 2017 before it became a SSSI, he criticised the processes of Natural England in designating the SSSI and what he viewed as its unfairness.

17. With respect to a statement in Natural England’s case (bundle page 48):-

“5.7 In September 2019 a Natural England staff member visited the field and observed that hedge cutting had taken place. In response to this Natural England issued a warning letter informing Mr Chaplin that consent was required for hedge cutting (Appendix 3). This letter also encouraged him to contact us so that Natural England could work up a management plan for the field.”

He commented:

*“5.7
this is not a club I wish to be in, thus I have no wish to talk with them.
that said I have no wish to change or harm the habitat, but rather observe traditional farming methods that would have made this field something they feel is special, and in their words if properly managed it would become a sssi within ten years.
I would like to respectfully add that the hedge had been laid by this point so little point in any conversation.”*

18. He argued that the hedging work was carried out in a proper way and had stopped when the workers were asked to do so by Natural England. He disputed Natural England’s statement that the rutting caused by vehicles and the burning of the grass by the bonfires set to destroy the brushwood and material cut from the hedge amounted to damage.

19. In response to a statement in Natural England's case (which referred to the period after Mr Chaplin had received the letter from the Highway Authority's contractor in July 2018):-

"8.4 In the intervening period, Mr Chaplin had actively engaged in the SSSI notification process and was well aware of the new restrictions and responsibilities that notification imposed."

Mr Chaplin replied:-

*"8.4
Again, this simply isn't true, I have never actively engaged in any process with them"*

20. He acknowledged that he could have appealed against the Stop Notices but had not because he felt that the process was unfair. He asserted that the legal costs element of the costs was unfair and concluded:-

*"9.1
Natural England, are not due costs, due to the fact that they haven't contacted me with regard to this issue to discuss, and the cost of the works carried out by Natural England to date are far outweighed by the legal costs. I don't see this as fair or reasonable or proportional.*

*9.2
Therefore we ask that this claim for cost be dismissed and enforcement cost recovery action be dismissed."*

21. In oral submissions Mr Chaplin explained that he had not known in 2018 that he should apply to Natural England before harrowing the field. He claimed that "throughout this I informed [Natural England] what I was going to do" but he acknowledged that he had not complied with the requirements to make formal applications. He stated that his agent had told him that he (Mr Daniell) would apply retrospectively for consent for the haymaking to be conducted when they had had a discussion in July. He claimed that he did not recognise the list of activities for which he had to apply for consent from Natural England. He had difficulty accepting that the law required him to apply to Natural England if "I want to do something with my land". He was unable to give any credible explanation for not seeking consent. He stated that he understood the SSSI was to protect the grassland and did not relate to the hedgerows. He stated that he had been on a family holiday and had not seen the Stop Notices and the cessation of activities in the field had been because of "your guys coming onto the field and talking to my guys". He did not recall the telephone conversation with the Natural England officer on 23 October. When it was suggested to him that he could have discussed the needs of the Highway Authority with Natural England and agreed on how to carry out the works in a less damaging way, he stated "I could have applied for funding, I don't

want to be a sponger". He claimed that the only thing he had done on the land which required permission was the activity at the end of October 2019 which had resulted in a Stop Notice, however when he was taken to the sequence of events and the notices served on him prior to that he was unable to give coherent answer to the other notices which had been served on him requiring him to cease activities on the land and repeated "I haven't been told that I need to apply". He continued to argue that he felt the system was unfair and that he should not have to pay, but acknowledged that he had been in error.

Consideration

22. There is a clear and well-established framework for the creation of SSSIs to protect the natural environment. Despite all his denials and obfuscations Mr Chaplin has been given all the information and explanation he needed in order to comply with the legal framework and manage that (small) part of his land which lies within the SSSI.
23. He was present when his agent explained in September 2019 the consequences for a farmer of the creation of an SSSI, when he appealed to the board of Natural England against it. Mr Chaplin did not seek a judicial review of the Board decision and therefore it is not open to him now to challenge the status of the field as part of a SSSI in these proceedings. It is also clear therefore that Mr Chaplin had full knowledge of the procedures to be followed before carrying out operations – his agent had applied on his behalf to obtain consent for haymaking and had, in the course of the presentation to the Board, in Mr Chaplin's presence, spelt out the restrictions.
24. However with that full knowledge he instructed that work be carried out on the hedges to the SSSI without seeking consent. He then ignored the letter of 8 October, and the phone call of 23 October. Mr Chaplin had the opportunity to appeal against the Stop Notices served on 25 October within 28 days, he did not do so. On his account he was advised that neither appeal would succeed, I believe him on that point.
25. Despite his protestations that no harm was caused by the hedging operations and that the hedge was laid properly, it is clear that the use of vehicles caused rutting and the burning caused damage to the grass sward. A key point of the restrictions is, as Mr Chaplin is fully aware, to ensure that when necessary operations such as haymaking and hedge-laying are carried out, they are carried out in a way which enables Natural England to ensure that harm is minimised; by listing those operations which need consent.
26. His claims that he was not aware of the details of the restrictions are clearly deliberate falsehoods. I am also entirely unsatisfied by his failure to recall the telephone conversation of 23 October and his claim that since he was on holiday he was not aware of the Stop Notices. His claim that there was no-one

able, during his absence to deal with urgent communications to the company warning it of criminal liability is, if true, a serious failure of corporate governance.

27. Despite Mr Chaplin's assertions to the contrary officers of Natural England have tried to engage, the difficulty is, as Mr Chaplin stated (paragraph 16 above) "*this is not a club I wish to be in, thus I have no wish to talk with them*" and as was clear from his attitude in the tribunal (paragraph 20 above) he views land ownership as a virtually untrammelled right and any intervention in his decision-making illegitimate. In essence he has shown contempt for and a disregard of a law he does not like.
28. Having chosen not to seek a judicial review of the decision-making which created a SSSI and chosen not to challenge the Stop Notices which it has been necessary to serve on him repeatedly: faced with the prospect of paying the costs of the Stop Notice he has appealed against the Enforcement Cost Recovery Notice which was served on him as an individual and on his company pursuant to Regulation 8 of the 2010 Order. This required each of them to pay costs incurred by Natural England in relation to the Stop Notice totalling £1,675.68 each.
29. Regulation 8(1) of the 2010 Order allows Natural England to serve an enforcement cost recovery notice on a person whom a Stop Notice has been served requiring that person to pay the costs incurred by Natural England in imposing that notice, including administration costs, investigation costs and costs of legal advice up to the time that the notice is served.
30. Regulation 8(5) provides that the person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.
31. Regulation 8(6) of the Environmental Sanctions (England) Order 2010 Order gives a person on whom an enforcement cost recovery notice has been served the right to appeal:
 - a. Against the decision the decision of the regulator to impose the requirement to pay costs;*
 - b. Against the decision of the regulator as to the amount of those costs; or*
 - c. For any other reason."*
32. Although Mr Chaplin has criticised Natural England for creating the SSSI and in its dealings with him, it is clear that Natural England had good evidence supporting the creation of the SSSI and followed the procedure to do so. It is also clear that Natural England have attempted to work with Mr Chaplin and he has repeatedly failed to deal with them and refused to abide by the procedures laid down by law for the authorisation of operations on the land. The evidence shows that his activities have caused damage and that his

compliance with Stop Notices has been at best partial, The Notices have therefore been ineffective in helping secure future compliance. I am satisfied that Natural England have been restrained in the use of their enforcement powers, it was certainly open to them to prosecute both Mr Chaplin and Overton (Gloucester) Limited for their breaches of the criminal law. In seeking to enforce costs against them Natural England have very properly sought to further discourage breaches of the law and also to recover the loss to public funds wasted by Mr Chaplin's irresponsible conduct. Although I have considered carefully the case put forward by Mr Chaplin, there is no basis for allowing these appeals under 8(6)(a) or (c).

33. Mr Chaplin has also argued that the legal costs were unnecessarily incurred, that they were excessive, disproportionate and went beyond the cut-off time for incurring cost – the service of the Stop Notice. The total costs were £3,351.36.
34. The breakdown of costs record travel and time for two Natural England staff who visited the SSSI on 23 October 2019 as totalling £285.35, the preparation of a statement, assembling the file and drafting the Stop Notice on 23 October as £550, "Preparation of external legal advice and finalising Stop Notice on 24 October 2019, £2461.01", serving of Stop Notice and preparation of covering information on 25 October £55.
35. While Mr Chaplin objected to the amount of costs under regulation 8(6)(b) and in particular the external legal costs which were incurred on 24 October, I do not consider them excessive for urgent work carried out in a complex factual and legal framework which needed to be able to face scrutiny in a tribunal. In such circumstances Natural England need to access expert legal advice of a high calibre to ensure that it is able to uphold the Stop Notice and protect the SSSI from further damage. I am satisfied that all the costs incurred were necessary.
36. While I referred to the need to avoid the "waste of public funds" earlier (paragraph 32 above), such waste is caused by Mr Chaplin's frivolous and irresponsible attitude of self-indulgent refusal to accept that he is subject to the rule of law.
37. I am satisfied that Mr Chaplin has not advanced any grounds to support these two appeals and they are dismissed.
38. In these circumstances I draw the attention of the parties to GRC rule 10, the power of the tribunal to award costs.

Signed Hughes
Judge of the First-tier Tribunal
Date: 9 November 2020