



Neutral citation number: [2024] UKFTT 00196 (GRC)

Case Reference: NVZ/2021/0033

**First-tier Tribunal
(General Regulatory Chamber)
Nitrate Vulnerable Zones**

**Decided without a hearing
Decision given on: 05 March 2024**

Before

**JUDGE NEVILLE
DR K AKANDE**

Between

MR JEREMY LAVIS

Appellant

and

THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD & RURAL AFFAIRS

Respondent

Decision: The appeal is dismissed.

REASONS

1. This appeal concerns land in Wiltshire, near Bradford-on-Avon.
2. Regulation 4(2) of the Nitrate Pollution Prevention Regulations 2015 (“the regulations”) requires the Secretary of State to monitor the nitrate concentration in freshwaters to identify whether it may be affected by pollution (or could be if the controls provided by the regulations are not applied), and then to identify land which drains into those waters and that contributes to its pollution. Such land may then be designated as a “nitrate vulnerable zone” (“NVZ”).
3. The regulations define “a relevant holding” as land and any associated buildings used for growing crops in soil, or rearing livestock for agricultural purposes, that fall wholly or partly in an NVZ. The occupier of a relevant holding must comply with rules concerning the use of nitrogen fertilisers and the storage of organic manure. Before the Secretary of State revises or adds to the designation of NVZs, regulation 5 requires him to publicise his proposals and send written notice to anyone appearing to be the owner or occupier of a relevant holding. Regulation 6 then affords such an owner or occupier a right of appeal to the Tribunal. So far

as still applicable, the only permitted grounds of appeal are that the relevant holding (or any part of it):

(a) does not drain into water which the Secretary of State proposes to identify, or to continue to identify, as polluted or which has been similarly identified in Wales or Scotland, [or]

(b) drains into water which the Secretary of State should not identify, or should not continue to identify, as polluted.

The Secretary of State refers to these as Type A and Type B appeals, respectively.

4. Mr Lavis appeals a notice served upon by the Secretary of State, proposing to include land he occupies as a relevant holding that falls within NVZ no. G23 “Penzance”. This NVZ consists of 72km² of land in the south of Penwith, Cornwall, and is delineated by the surface water catchment boundaries that demarcate the Secretary of State’s modelled risk to groundwater. A map of the NVZ is annexed to this document.

5. The grounds of appeal read as follows:

There is no drainage ditches drains or watercourses on any of the land so no water drains away from the land.

And seek:

Removal of requirement to document to maintain written records of NVZ compliance on what is a very small land holding with no drainage away from the land.

6. We treat this as a Type A appeal. The Secretary of State has filed a response to the appeal, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. It confirms that NVZ No. G23 covers vulnerable groundwater, and annexes detailed monitoring and modelling data in support of that conclusion. Specific to this appeal, the Secretary of State argues:

We accept that there is not direct access to watercourses from the land identified by the appellant, however this is not relevant in this case as the land appealed is not designated as a surface water NVZ. The land appealed is situated over well drained gritty loamy soils, therefore rainwater that falls on this land will drain to the groundwater which is designated NVZ G23.

7. It was open to Mr Lavis to file a Reply to that Response. He has not done so, and nor has he provided any evidence or further argument in support of his case. The only issue between the parties therefore relates to the absence of any “drainage ditches drains or watercourses on any of the land”. Water must drain somewhere. We are satisfied, for the reasons put forward in the Response and its accompanying documents, that water from this land drains into NVZ No. G23.

Signed

Date:

Judge Neville

4 March 2024