



## Briefing Note

From: SM  
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Reference: JR Note to members 20220910.docx  
Subject: Harris v. Environment Agency Judicial Review

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### Draft text for review & comment

As you have probably already seen or heard, Mr Justice Johnson has published his Approved Judgement in respect of the Harris v Environment Agency judicial review (JR). The judgement can be found here:

<https://www.freeths.co.uk/wp-content/uploads/2022/09/Harris-Judgment-6-Sep-22.pdf>

The JR sought to resolve disagreements between the Environment Agency & Mr & Mrs Harris (the claimants) in respect of the Ant Broads and Marshes RSA Closure Report. This was issued by the Environment Agency in June 2021 and forms the basis of our on-going work on the Ant Valley Masterplan.

Mr & Mrs Harris's claim against the Environment Agency succeeded. A summary of the outcome is given in paragraphs 111 to 115 of the judgement:

*111. The claimants have shown that water abstraction **may be causing deterioration** of protected habitats or significant disturbance of protected species within The Broads Special Area of Conservation (see paragraph 99 above).*

*112. The Environment Agency must (by reason of regulation 9(3) of the Habitats Regulations) have regard to the requirements of article 6(2) of the Habitats Directive. It must therefore be in a position to justify any departure*

*from those requirements. The Environment Agency's obligation under article 6(2) continues to be enforceable in domestic law: section 4 of the 2018 Act. That obligation must continue to be interpreted in accordance with the **precautionary principle**: section 6 of the 2018 Act.*

*113. It follows that the Environment Agency must take appropriate steps to ensure that, in the SAC, there is no possibility of the deterioration of protected habitats or the significant disturbance of protected species as a result of licensed water abstraction. The Environment Agency has discharged that obligation in respect of three sites of special scientific interest. But it has not done so in respect of all sites within the SAC. That is **because its review of abstraction licences was flawed and (at least in relation to permanent licences) it has not conducted a sufficient further review to address those flaws**. It is therefore in breach of regulation 9(3) of the Habitats Regulations and article 6(2) of the Habitats Directive.*

*114. In addition, having decided to comply with article 6(2), **it was not rational for the Environment Agency to limit its investigation to just three sites without undertaking further work to ensure compliance with article 6(2) across the entire SAC.***

*115. **The claim therefore succeeds.***

Mr & Mrs Harris sought an order to require the Environment Agency to undertake further a further RSA report forthwith, which the Environment Agency contended was unworkable. Mr Justice Johnson will make his directions in due course.

Over the coming weeks, BAWAG will work with the NFU Legal Assistance Service (LAS) and the Environment Agency to determine the implications of the JR for those abstracting in the vicinity of the Broads SAC sites. As these become clearer, we will be in touch with members to agree next steps.

If you have any queries, please contact Steve Moncaster, BAWAG Membership & Technical Adviser.