

SUMMARY OF DECISIONS FOR DISMISSAL OF THE CLAIM

Ground 1 – mitigation or compensation:

Sir Peter Lane rejected the contention that the Defendant had failed lawfully to determine whether the replacement functionally linked land at Lilford Hall Estate was mitigation rather than compensation. He held that the factual context was materially different from cases such as Briels and Grace, because the development was not within the SPA itself and the professional consensus was that suitable replacement FLL could prevent any significant adverse effect on the SPA. He found that the Defendant was entitled to rely on Natural England and Place Services, that no site visit by the Defendant or Place Services was legally required, that the section 106 agreement secured the land as replacement FLL, and that the issue had not become a principal important controversial issue requiring separate reasons. Ground 1 was therefore dismissed as, in substance, a merits challenge disclosing no public law illegality.

Ground 2 – alleged waste activities near the replacement FLL:

Permission was granted on this rolled-up ground, but the ground failed. Sir Peter Lane accepted that there was sufficient evidence, for the purposes of the proceedings, that burning and burial of waste had occurred on parts of the Lilford Hall Estate. However, he held that the Claimant had not shown that those activities were so obviously material that it was irrational for the Defendant not to take them into account when assessing the efficacy of the proposed replacement FLL. He relied in particular on the ecological evidence of Ms Fox, which indicated no basis for concluding that any potential contamination would undermine the ability of the FLL mitigation area to function as intended. He also emphasised that the detailed mitigation strategy had to be approved before development could commence and that any failure to establish and maintain the required FLL could be addressed through the section 106 agreement.

Ground 3 – failure to take account of the SPA SPD:

Sir Peter Lane rejected the argument that the Supplementary Planning Document required the replacement FLL to be treated as compensation rather than mitigation. He

held that, properly interpreted, the SPD's statements about habitat creation outside the SPA being compensation were directed to physical loss or fragmentation within the SPA itself. The SPD did not treat FLL as if it were itself part of the European site, and if it had done so it would have misstated the law. The RSPB case did not support the proposition that loss of FLL must be treated as loss of part of the SPA. The professional consensus was that the Lilford Hall Estate habitat would avoid significant harm arising from the loss of FLL at the development site. Ground 3 was therefore dismissed.

Ground 4 – in-combination assessment:

Sir Peter Lane held that in-combination effects had been addressed in both the Appropriate Assessment and the November Officer's Report. Although he accepted that one reason given in the October AA—that the Castle Manor Farm scheme need not be considered because permission was not guaranteed—was wrong in law, he held that this error was immaterial. The decisive point was that both the present development and Castle Manor Farm were assessed as having mitigation sufficient to leave no residual effects capable of combining with other schemes. He rejected the Claimant's additional arguments about acoustic disturbance affecting Castle Manor Farm's replacement FLL, waste activities at Lilford Hall Estate, and a possible Habitat Bank, holding that these matters were either not obviously material, unsupported by evidence, or adequately addressed by the section 106 mechanisms and earlier findings. Ground 4 was dismissed.

Ground 5 – reasons:

Sir Peter Lane held that this ground substantially overlapped with Ground 1. The reasons for the Defendant's conclusion were evident from the relevant documentation: any potential adverse effects from the loss of FLL at the development site would be avoided by the creation of replacement FLL secured through the section 106 agreement. He held that an objective reader would understand why the Defendant concluded that the replacement FLL would prevent adverse effects on the SPA, namely because Golden Plover and Lapwing would be able to feed and roost on the replacement FLL as they had on the development-site FLL. No further reasons were required. Ground 5 was dismissed.

Overall outcome:

The judicial review was dismissed. Grounds 1, 3, 4 and 5 failed, and although permission was granted on Ground 2, that ground also failed.