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Your ref: TGY/TWS/00191552/3
Our ref: Z1911900/MBJ/JD3

22 October 2020

Dear Sirs

Wild Justice v Secretary of State for Environment, Food and Rural Affairs CO 731 2020

We refer to your letter of 21 October 2020, and your subsequent email of the same date regarding the proposed timetable for the future case management of this claim through to the hearing listed for 3-4 November 2020.

Dealing with each of the substantive questions raised in your letter, following the same numbering, we say as follows by way of response:

- 1. Please precisely explain and provide the evidential basis and legal rationale for the proposal that a protective buffer zone of just 500m around European sites is appropriate (with reference to, for example, the Madden and Sage Report and/or other peer-reviewed scientific studies).**

The legal rationale for the proposal is that pending the further work on gathering information and related measures referred to in [REDACTED] third witness statement, some step needs to be taken to ensure that releases in the interim do not cause deterioration or significant disturbance contrary to Article 6(2). The proposed interim licensing scheme, together with the other measures mentioned (gathering further evidence, the existing regulatory regime in place and additional monitoring by Natural England), are regarded as appropriate steps under that provision. The evidential basis is addressed in [REDACTED] third witness statement and the advice from Natural England exhibited thereto. [REDACTED] explains that Natural England has provided advice to the Secretary of State on the implications of the Madden and Sage report. Natural England's advice, exhibited to that statement, was that that negative effects tend to be localised and that studies indicate minimal or no effects beyond 500m from the point of release. In particular, Natural England has concluded that effects beyond 500m are likely to be minimal because studies show that dispersal of birds tends to be less than 500m from the release sites and the negative effects in consideration are linked to the presence of birds.

On the basis of Natural England's advice, which in turn was based on the Madden and Sage Report, the Secretary of State has concluded that that the 500m buffer zone, in the context of the existing regulatory regime in place and additional measures proposed, will be sufficient to avoid deterioration or significant disturbance on European sites from release and associated activity in respect of the 2021 shooting

Gilad Segal - Head of Division

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season. As explained further below, the Secretary of State is in the process of designing the interim licensing scheme. [REDACTED] third witness statement explains (at paragraph 29) that any general licence to be introduced as part of that scheme is likely to have conditions relating to the number of birds, density of release and location of key infrastructure. This is because the evidence is that effects are significantly reduced where birds are released in smaller numbers and at lower densities. However, the precise details of any conditions are subject to further consideration and public consultation.

2. With regard to the process for adopting the conditions attached to the contemplated general licence, please confirm the intended legal principles underpinning the design of the scheme.

As explained in [REDACTED] third witness statement the design of the licence scheme is currently in process. [REDACTED] statement explains (at paragraph 29) that for the 2021 season, the currently preferred option is that a general licence will be used, which will be subject to appropriate assessment. Consequently, the Secretary of State needs to be satisfied that compliance with conditions of the general licence is sufficient to rule out adverse effects on the integrity of relevant European protected sites from release and associated activity in respect of the 2021 shooting season.

[REDACTED] witness statement explains (at paragraph 29) that in addition to the general licence, the intention is that shoots will have the option to apply to Natural England for an individual licence. This process will require an appropriate assessment in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 and article 6(3) of the Habitats Directive.

3. In particular, please confirm that the proposed conditions will be framed to ensure that, for all European sites which they cover (including the most vulnerable), compliance with them will make it possible to rule out the possibility of adverse effects on site integrity of the site (including by reference to issues such as the number and density of birds that may be released, the timing of such releases etc.). That of course would not preclude specific licence applications on the basis of proper evidence and assessment which allow for a less restrictive approach to be taken in particular instances.

As above, any general license scheme should be designed so that compliance with conditions of general licence is sufficient to rule out adverse effects on the integrity of all relevant European protected sites from release and associated activity. The interim licensing scheme is in the process of development and will be consulted on. [REDACTED] third witness statement contains the information which is currently available, but the factors you mention are likely to be considered as the basis for conditions, given that these are factors identified as relevant in the review. It is correct to say that such a scheme would not preclude applications for individual licences, supported by evidence and assessment of impact on the specific site: [REDACTED] says this at paragraph 29 of his third witness statement.

4. Please explain the legal basis for restricting consultation on the interim regime to industry (paragraphs 26 and 29) and/or confirm that our client and the general public will be consulted on this important public interest matter.

If you refer to paragraph 30 of [REDACTED] third witness statement you will see that he says categorically that the details of the proposed interim licensing regime will be finalised following public consultation. There is no such restriction as you suggest.

Your letter made reference to the possibility of you filing a supplementary skeleton to address the matters which your previous skeleton has failed to take account of, which is due, as you state, to an oversight on your part.

Given our compliance with your stated deadline for a response (by 4pm today), we now have a revised timetable agreed as follows:

- Claimant to file a supplementary skeleton argument by 4pm on Friday 23 October 2020;

- Defendant and the IPs to file a skeleton argument by Wednesday 28 October 2020 (together with the authorities bundle).

We are sending a copy of this letter to the solicitors acting for Interested Parties.

Yours sincerely

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For the Treasury Solicitor

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