

## **DECISION STATEMENT**

### **ABSTRACTION LICENCE APPLICATION**

**J.H and P.E Nicholson Ltd**

**Application number:** NPS/WR/023817

**Licence number:** AN/034/0009/004

**EA Area:** Essex Norfolk and Suffolk

**Date of Application:** 19 December 2017

#### **Applicant details:**

J.H and P.E Nicholson Ltd.  
Neatishead Hall  
Neatishead  
Norwich  
Norfolk  
NR12 8XX

#### **Summary of the proposal:**

This application is for a new licence on the same terms to replace an expiring abstraction licence AN/034/0009/004 that is time limited and expired 31 March 2018.

Limited Extension of Validity (LEV) was applied to this licence to enable the Licence Holder to continue to abstract under the terms of their expired licence whilst we determined their renewal application.

This proposal is located in the Broadland abstraction licensing strategy area.

The licence being applied to be renewed authorises J.H and P.E Nicholson Ltd. to abstract water from a borehole drilled into the Chalk aquifer at Neatishead Hall, Neatishead in Norfolk for the purpose of spray irrigation between April and September inclusive each year.

#### **Source of supply:**

Underground strata comprising of Chalk.

#### **Points of abstraction and quantities:**

National Grid Reference TG 35551 18665.

Abstraction volumes:

54,500 cubic metres per year

1,091 cubic metres per day

54 cubic metres per hour

Instantaneous rate: 15 litres per second

**Means of abstraction:**

A borehole not exceeding 90 metres in depth and 300 millimetres in diameter with a submersible pump.

**Purpose of abstraction (abstraction only):**

Spray irrigation.

**Abstraction period (abstraction only):**

From 1 April to 30 September inclusive each year.

**Case history:**

On 25 March 2010 Licence number AN/034/0009/004 was issued to replace expiring licence number 7/34/09/\*G/0138C. The new licence was time limited to expire on 31 March 2018. The licence was varied in 2011 to change the source of supply from sands and gravels to the Chalk aquifer and to change the means of abstraction from 23 wellpoints to a single borehole.

We sent a letter to the Licence Holder on 30 August 2017 to advise that abstraction licence number AN/034/0009/004 was due to expire on 31 March 2018 and that the applicant needed to apply for a new licence to continue abstracting after this date.

The letter also advised that the licence would be subject to a review of its potential to impact on parts of the Ant Broads and Marshes Site of Special Scientific Interest (SSSI), which is part of the Broads Special Area of Conservation (SAC).

On 13 December 2017 we received an application to renew the abstraction licence on the same terms. The application was deemed valid and we subsequently sought further extensions to the determination deadline to allow for the Restoring Sustainable Abstraction (RSA) investigations to be concluded.

**Justification of quantities:**

Under Section 38(3)(b) Water Resources Act 1991, we have a duty to consider the requirements of the Licence Holder, in so far as they are reasonable. In the case of applications made to renew historic existing licences, this consideration will be to look at historic uptake of the licence and any future plans that the licence will be used for.

The applicant has provided the following information to support continued need for the abstraction licence.

The cropping area where irrigation is applied on an annual basis subject to demand is:

<b>Crop</b>	<b>Area ha</b>	<b>Acre inches applied</b>	<b>Total cubic metres (m<sup>3</sup>)</b>
Potatoes	28.3	5	35,000

Dwarf French Beans	12.0	2	5,930
Lettuce	20.67	1.6	8,500
Sugar Beet	28.0	1.5	10,378
<b>Total</b>			<b>59,808</b>

Note: this figure does not include occasional spring irrigation of winter and spring barley.

The applicant's water requirements appear reasonable when compared against the Water Resources Optimum Use Manual (WROUM) quantity of water required in both a dry and average year.

The applicant has provided the following 2013-2018 abstraction returns data in support of their licence renewal application. No abstraction returns have been submitted whilst the Licence Holder has been operating under Limited Extension of Validity (LEV), under licence number AN/034/0009/004/L. This was not pursued further as the application is being refused.

<b>Year</b>	<b>Quantity abstracted (m<sup>3</sup>/year)</b>	<b>% of licensed total</b>
2013	54,500	100%
2014	24,477	45%
2015	38,544	71%
2016	30,480	56%
2017	19,249	35%

The applicant has stated that the variation in demand reflects seasonal rainfall received and crop rotation, particularly for potatoes.

As shown by the abstraction returns data above, the recent returns (prior to the renewal application being submitted in 2018) have been variable but show slightly higher than average uptake of resource between 2013 and 2018.

Given the facts presented, the quantities applied for are considered sufficient to meet the applicant's water requirements.

However, as the application is being refused, further justification of need is not being considered in this case.

**Resource assessment:**

The abstraction point is within the Broadland Rivers Chalk & Crag, GB40501G400300 groundwater unit in the Broadland Rivers Abstraction Licensing Strategy (ALS).

According to the Broadland Rivers Abstraction Licensing Strategy, the confined chalk groundwater in the Broadland area is fully committed and no further consumptive abstraction can be considered.

**Impact assessment of proposal:**

Using the Batched Abstraction Modelling (BAM) methodology, impact assessments were carried out for each application within the Ant, Bure and Thurne (ABT) area which determined the potential reduction in groundwater levels in the shallow groundwater table as a result of the abstraction. Using these data it was determined whether adverse effect could be concluded by the abstraction on designated sites.

**Statutory consultation:**

As the application was not advertised, it was not necessary to notify any statutory bodies other than Natural England.

**External representations:**

No representations were received as the application was not advertised.

**Protected rights:**

As this application is for a same terms renewal we would not expect any additional impact on existing protected rights or lawful uses.

**Conservation issues:**

The abstraction subject to this application has the potential to impact The Broads SAC, Broadland SPA, and Broadland Ramsar and we were unable to conclude no likely significant effect when assessing its implications for the sites **in combination** with other plans, permissions and projects.

We therefore completed an Appendix 4 and joint Habitats Regulations Assessments Stage 1 and 2 (HRA1 and 2) appropriate assessment **which concluded that an alone and in combination adverse effect cannot be ruled out or avoided**, even with conditions or restrictions. Therefore, we are refusing the application.

Natural England responded on 20 October 2023 and confirmed that they agree with our conclusion of adverse effect.

**Biodiversity and sustainable development:**

We have considered whether additional requirements should be imposed in relation to our principal aim of contributing to attaining the objective of sustainable development under section 4 of the Environment Act 1995, the existing requirements are sufficient in this regard and no other appropriate requirements have been identified.

We have had regard to Government guidance issued under section 4(2) of the Act, namely 'The Environment Agency's Objectives and Contribution to Sustainable Development: Statutory Guidance (December 2002)'. Regarding the exercise of our water resources functions, we are required:

'To plan to secure the proper use of water resources by using strategic planning and effective resource management which takes into account environmental, social and economic considerations, and in particular:'

'To ensure that the abstraction of water is sustainable, and provides the right amount of water for people, agriculture, commerce and industry and an improved water-related environment; and to develop and maintain a framework of integrated water resources planning for the Agency and water users.' The principles of sustainable development and biodiversity have been considered as part of our refusal of this application.

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### **Social and economic welfare of rural communities:**

We have carefully considered the effects on economic and social wellbeing of local communities in rural areas under section 7(1)(c)(iii) Environment Act 1995 but given the obligation to determine a licence application so as to ensure no adverse effect on integrity of European sites in combination with other plans, permissions and projects, we have refused the application to meet that obligation having had regard to effects on rural communities.

We have taken into account the statutory requirement in our regulatory decision to have regard to the Regulators' Code and considered the impacts of the decision on the applicant. However, this requirement does not override our other statutory duties and in particular our duties under the Conservation of Habitats and Species Regulations 2017 to ensure a conclusion of no adverse effect on site integrity.

We have considered whether it is proportionate to refuse this application recognising the impact of the refusal on the applicant's business and concluded that it is in the general interest to refuse the application in order to ensure no adverse effect on European sites.

### **Costs/ Benefits:**

We have taken into account the likely costs and benefits of our decision on this licence application ('costs' being defined as including costs to the environment as well as financial costs of the decision) as required by section 39 Environment Act 1995. We have considered this duty against the obligation to meet Habitats Regulations and Water Environment (Water Framework Directive) Regulations requirements but note the duty to take account of costs and benefits does not affect our obligation to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon us under these Regulations [section 39(2) Environment Act 1995].

We considered the information the applicant provided regarding impacts to their business as a result of refusing their licence renewal application. These issues have been taken into account however these considerations do not override our statutory duties which include those under Regulation 63 of the Habitats Regulations to assess effects of abstraction on the integrity of

European sites and which prevents licences being issued when there is a link between abstraction and adverse effects on the European sites.

This refusal has been deemed necessary for the purposes of protecting the environment, and, in particular, removing the contribution that this abstraction has to the potential adverse effects identified within The Broads Special Area of Conservation (SAC), Broadland Special Protection Area (SPA) and Broadland Ramsar.

**Conclusion and recommendation:**

It is recommended that the application is refused for the following reason:

It is not possible to ascertain that this abstraction is not having an adverse effect alone on Alderfen Broad SSSI components of the European sites (The Broads SAC, Broadland SPA and Broadland Ramsar)

It is not possible to ascertain that this abstraction is not having an adverse effect in combination on Ant Broads & Marshes SSSI, components of the European sites (The Broads SAC, Broadland SPA and Broadland Ramsar).

Applying the requirements of the Habitats Regulations, we cannot consider renewing abstraction under this licence.

**Contact the Environment Agency:**

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