

DECISION STATEMENT

ABSTRACTION LICENCE APPLICATION

Francis James Clabon, Susan Mary Clabon, Robert James Clabon & Philip John Clabon.

Trading as F J Clabon & Partners

Application number: NPS/WR/023640

Licence number: 7/34/09/*G/0129A

EA Area: East Anglia

Date of Application: 25 October 2017

Applicant details:

Mr Robert Clabon
F J Clabon & Partners
Rookery Farm
Mundesley Road
North Walsham
Norfolk
NR28 0RF

Summary of the proposal:

This application is for a new licence on the same terms to replace an expiring abstraction licence 7/34/09/*G/0129A 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 renewed authorises F J Clabon & Partners to abstract water from a borehole drilled into the Chalk aquifer at Home Farm, Sloley in Norfolk for the purpose of spray irrigation between April and October inclusive each year.

Source of supply:

Underground strata comprising of Chalk.

Point of abstraction and quantities:

National Grid Reference TG 2870 2393.

63,000 cubic metres per year

1,400 cubic metres per day

72 cubic metres per hour
At an instantaneous rate not exceeding 20 litres per second

Means of abstraction:

A borehole not exceeding 91.4 metres in depth and 457 millimetres in diameter with a pump.

Purpose of abstraction (abstraction only):

Spray irrigation.

Abstraction period (abstraction only):

During the months April to October inclusive each year

Case history:

In March 2001 licence 7/34/09/*G/0129 was transferred to F J Clabon & Partners, expiring 31 October 2007. The licence was renewed in 2008 for ten years under licence 7/34/09/*G/0129A which expired on 31 March 2018.

On 30 October 2017, an application was received in the Agency to renew the licence on the same terms. On 23 November 2017 the Agency informed the applicant that the annual volume on the licence would be reduced to 36,000 cubic metres per year in line with Agency policy on WFD and preventing the risk of deterioration at that time. The application was deemed valid and the WR184 was sent to the applicant on 24 November 2017.

On 2 February 2018, we informed the applicant in an email that we were undertaking a review of all licenced abstractions on the Ant Broads and Marshes Site of Special Scientific Interest (SSSI) and other SSSIs in the Ant Valley and that 'licence extension of validity' will apply to this licence whilst we completed our 'Restoring Sustainable Abstraction' (RSA) review. We subsequently sought further extensions to the determination deadline to allow for the 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 justification in terms of cropping area and irrigation requirements to support continued need for the abstraction licence.

	Applicants requirements
Crop	Hectares (ha)
Potatoes	33 ha
Winter Wheat	66 ha
Peas	33 ha
Sugar Beet	33 ha
Spring Barley	33 ha
Total water requirements:	63,000m ³ per year

Whilst the applicant's water requirements, 63,000 m³/yr, appear reasonable when compared against the Water Resources Optimum Use Manual (WROUM) quantity of water required in both a dry and average year, this must also be compared to historic usage.

The applicant provided the following 2008-2017 abstraction returns data in support of their 2017 licence renewal application.

Year	Annual quantity returns (m ³)	Percentage of authorised annual quantity (63,000 m ³ /year)
2008	23,946 m ³	38.8%
2009	29,116 m ³	46.2%
2010	35,841 m ³	56.9%
2011	16,073 m ³	25.5%
2012	2,051 m ³	3.3%
2013	33,902 m ³	53.8%
2014	32,715 m ³	51.9%
2015	21,334 m ³	33.8%
2016	24,673 m ³	39.1%
2017	31,345 m ³	49.7%

As shown by the abstraction returns data, the recent returns (prior to the renewal application being submitted in 2017) have been variable.

The range is from 3.3% up to 56.9% based on the 63,000 cubic metres per year currently authorised for spray irrigation purposes. This spray irrigation licence has moderate utilisation, with an annual average of 40%.

When this proposal was originally assessed by the Agency in November 2017, we proposed to reduce the annual quantity on the licence to 36,000 m³/year. This is in line with the renewals approach as detailed in the Broadland ALS which states that some time-limited licence renewals may require changes to reflect historic annual usage to manage the risk of deterioration to the

environment. If there is a risk that the ecology could be adversely affected at fully licensed rates of abstraction, then we will cap the licence at the historic maximum uptake to reduce the risk of ecological deterioration from the 2015 RBMP baseline. This was confirmed in an email to the applicant on 23 November 2017.

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 Abstraction Licensing Strategy (ALS).

Groundwater unit balance shows more water has been abstracted based on recent amounts than the amount available. No further consumptive licences will be granted. Therefore, this catchment is closed to further consumptive abstraction.

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 this data it was determined whether adverse effect could be concluded by the abstraction on designated sites.

Statutory consultation:

This application is to renew a licence on the same terms which has met the statutory exemption from advertising.

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 had 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 (HRA 1 and 2) appropriate assessment which concluded that an in combination adverse effect cannot be ruled out or avoided, even having considered mitigation measures and conditions. As mitigation we considered whether a lower annual quantity could be licensed however modelling showed that this would not remove the potential for adverse effect. Therefore, we are refusing the application to renew licence 7/34/09/*G/0129A.

Natural England were consulted via an Appendix 4 and joint HRA1 and 2. Natural England responded on 7 October 2024 and confirmed that they agree with our conclusion of in combination 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.

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 over-ride 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 site.

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:

The abstraction is contributing to an in combination adverse effect on Smallburgh Fen SSSI, a component of 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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