

In the matter of:

MR M R FURSDON

V

ENVIRONMENT AGENCY

**SKELETON ARGUMENT ON BEHALF OF
MR MILES FURSDON**

Adam Corbin

Barrister

3 August 2026

ref.
AVC/153057/1

INTRODUCTION

1. Mr Fursdon (**MF**) seeks to appeal the imposition of a change of licence brought by the Environment Agency (**EA**) under section 52 of the Water Resources Act 1991 (**WRA**).
2. In this skeleton argument references to the bundle are shown as [core document number/page number].

SUMMARY

3. MF maintains that the EA has sought to impose the licence variation without reference to any supporting environmental evidence base, and that the licence variation should not be upheld upon the bases that:

- (a) it is incorrect to assume that the EFI level of Q95 (resulting in a 484% increase in HoF) is appropriate here;
 - (b) the percentage take proposed does not reflect the health of the deprived reach;
 - (c) the fish screening imposed does not even touch the realities of abstraction on the West Webburn or mitigate any impact;
 - (d) the cost benefit calculations assumed by the EA are wild; and
 - (e) the EA has failed to conduct any assessment of the impact of its licence variation on the climate in accordance with its sustainable development objectives.
4. MF also seeks his costs upon the basis that the EA has not approached this matter in an appropriate manner.

BACKGROUND

- 5. MF has held the current abstraction licence [1/1] at Old Walls on the West Webburn River since 21 July 1992. Abstraction for power generation has taken place at this location since 1936.
- 6. The current abstraction set-up is described by MF in his witness statement at [47/5] and in the plans provided at [49/34].
- 7. The EA has served notice under s.52(1) and s.53(1)(b) WRA [23/1] seeking to impose a new licence as shown at [13/1].
- 8. MF has objected to the imposition under s.53(4) resulting in this Inquiry.

LAW (ABSTRACTION)

- 9. Water Framework Directive (**WFD**) and Statutes and Regulations set under it are intended to give a statutory framework for the protection of water bodies as part of River Basin Districts. River Basin Management Plans are produced by the EA, and contain objectives and a summary of measures to achieve them.
- 10. The WFD has informed the development of the legislation over time and The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (**the Regulations**) are specifically made to enact it.

11. Amongst the plethora of duties imposed upon public bodies, r.33 of the Regulations requires that the Secretary of State and the EA exercise their functions so far as affecting a river basin district, to have regard to the river basin management plan for that district.
12. The Regulations at r.13 also require that the Secretary of State and the EA prevent deterioration of the status of each body of surface water and protect, enhance and restore each body of surface water (other than an artificial or heavily modified water body) with the aim of achieving good ecological status, if not already achieved, by 22 December 2021.
13. It is accepted for the purposes of this Inquiry that the abstraction regime, including the WRA, is subject to or part of the overall approach to the protection of water resources.
14. The EA has formulated the proposals set out in the proposed licence [13/1] as set out in its licence change proposal report [15/1] pursuant to s.52 WRA.
15. S.53 WRA allows the EA to pursue those proposals:

53 Modification in pursuance of proposals under section 52

(1) Subject to the following provisions of this section, where the [appropriate agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—

(a) if the proposals are for the revocation of the licence, revoke the licence; and

(b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.

16. Section 54 deals with the matters which the SoS should consider upon referral under s.53(4):

54 Reference of modification proposals to the Secretary of State

(1) Where any proposals of the [appropriate agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—

(a) the proposals;

(b) the objection of the holder of the licence; and

(c) any representations in writing relating to the proposals which were received by the [appropriate agency] before the end of the period mentioned in subsection (2) of that section,

and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.

(2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—

(a) cause a local inquiry to be held; or

(b) afford to the holder of the licence and the [appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [appropriate agency] to be heard with respect to the proposals.

(3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—

(a) the abstraction of water; or

(b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.

(4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—

(a) any reference to the [appropriate agency] were a reference to the Secretary of State;

(b) any reference to the application were a reference to the proposals; and

(c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.

(5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.

(6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

17. The reference to protected rights (as conferred under s.39A WRA) is only applicable to MF, as the proposal is to very significantly decrease the volume of abstraction, meaning that any other abstractors in catchment will not be negatively affected by it.

18. The reference to s.39(2) is not relevant here as this licence does not relate to abstraction from an underground source.

19. Under the WRA this leaves the only specific consideration under s.40:

40 Obligations to take river flow etc into account

(1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.

(2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the [appropriate agency], in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.

(3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the [appropriate agency], in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—

(a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or

(b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.

[...]

20. The relevant parts of s.21 are:

21 Minimum acceptable flows

[...]

(4) In determining the flow to be specified in relation to any inland waters under subsection (2)(c) above, the [appropriate agency] shall have regard—

(a) to the flow of water in the inland waters from time to time;

(b) in the light of its duties under [sections 6(1), 7 and 8 of the 1995 Act], to the character of the inland waters and their surroundings; and

(c) to any water quality objectives established under Chapter I of Part III of this Act in relation to the inland waters or any other inland waters which may be affected by the flow in the inland waters in question.

(5) The flow specified in relation to any inland waters under subsection (2)(c) above shall be not less than the minimum which, in the opinion of the [appropriate agency], is needed for safeguarding the public health and for meeting (in respect of both quantity and quality of water)—

(a) the requirements of existing lawful uses of the inland waters, whether for agriculture, industry, water supply or other purposes; and

(b) the requirements, in relation to both those waters and other inland waters whose flow may be affected by changes in the flow of those waters, of navigation, fisheries or land drainage.

[...]

21. The minimum referred to in s.21(5) above is the Environmental Flow Indicator (**EFI**) methodology set out in the EA's EFI Position Statement (and relating in particular to a non-time limited licence at [7/11]).
22. The EA has automatically assessed compliance with the EFI at Q95 based upon this methodology on the assumption that this is the minimum amount of flow required to support good ecological status under the WFD. The EA's methodology is overly simplistic and is applies a "one size fits all" approach, regardless of whether the abstraction is consumptive or (as at Old Walls) non-consumptive.
23. Under s.39 Environment Act 1995 (**EA1995**) the EA is also required to consider whether or not to exercise any power conferred upon it by or under any enactment, or in deciding the manner in which to exercise any such power, unless and to the extent that it is unreasonable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question. 'Costs' includes costs to any person and costs to the environment (s. 56(1) EA1995).
24. The requirement is excluded where the EA is discharging any duties or complying with any requirements, or pursuing any objectives, imposed upon or given to it otherwise than under that section. It would appear that the EA will argue that, as the Regulations require it to take action to ensure river waters are in good condition [etc], and this is imposed upon it, it is not required to undertake a cost-benefit analysis (notwithstanding that it already had).
25. There would appear to be no decided cases on the application of s.39 EA1995. It is submitted that the EA is optimistic in the interpretation it has sought to apply. The WRA is an enactment, and the EA is exercising powers under s.52&53. A separate duty under the Regulations does exist, but the WRA power is exercised independently of that.
26. MF will also argue that the EA's duties under:

- (a) the EA1995 s.4(1) so as to make the contribution towards attaining the objective of achieving sustainable development;
 - (b) the Deregulation Act 2015 s.108(1) and guidance (see EA's SOC at para. 4.22 [33/14]) on promoting economic growth; and
 - (c) the Legislative and Regulatory Reform Act 2006 s. 21 and Regulators' Code requiring necessary and proportionate burdens,
- must encompass a requirement to evaluate and give credit for carbon reduction and climate change mitigation.

APPLICATION

27. MF maintains that the licence variation should not be upheld upon the bases that:

- (a) it is incorrect to assume that the EFI level of Q95 (resulting in a 484% increase in HoF) is appropriate here;
- (b) the percentage take proposed does not reflect the health of the deprived reach;
- (c) the fish screening imposed does not even touch the realities of abstraction on the West Webburn or mitigate any impact;
- (d) the cost benefit calculations assumed by the EA are wild; and
- (e) the EA has failed to conduct any assessment of the impact of its licence variation on the climate in accordance with its sustainable development objectives.

The EFI level of Q95

28. The current HoF is 25l/s against a 146l/s proposal. It is understood that this is supposed to reflect an EFI flow at Q95.

29. MF disputes that it is appropriate to assume in this case that Q95 would support good ecological status under the WFD.

30. The "Restoring Sustainable Abstraction Ecology Report 2018" prepared for the EA sets out that there is no "ecological impact downstream of the weir", and "The depleted stretch showed no signs of deterioration..." [14/4-21].

31. The drop in ecological status of the river in 2015 [8/11] is highly unlikely to have been caused by the abstraction permitted under the existing licence, given that abstraction has been at current levels since around 1995 with no recorded negative impact.
32. Further, the River begins failing on Mercury and PBDE (most likely from sewage discharge) from 2019 [8/12]; this is likely to be the cause of the decline in status.
33. The EA has not modelled for or considered the fact that the spillway allows for additional water down the depleted stretch (and in turn that not all of the water entering the leat is abstracted through the turbine).
34. The EFI is intended to be a tool for whole river status, rather than a short depleted reach, meaning that it overstates the impact of non-consumptive abstraction.
35. The EFI methodology states that: "Where we have confirmed that abstraction is the reason for not achieving environmental objectives, we will use EFI as our default target to determine the extent of action to address actual and potential abstraction pressures..." [7/4]. The EA has failed to demonstrate at all that this is the case. Flow is not even within the RNAG [8/4].
36. The EA has done nothing to determine whether increasing the HoF by nearly 500% will still work with the current weir and fish pass set up, and the proposed licence does not contemplate any adjustments to the weir. The impact could be entirely negative, but the EA has not troubled to find out.
37. The Fishtek Report outlined some basic improvements to the weir [29/20]. The EA has failed to undertake these improvements (even at a modest cost) before embarking on a £2m frolic to force a variation upon MF.
38. The EA has assumed that there will be no harm to the leat if no sweetening flow is provided when the HoF drops to below 40l/s, even though it currently has flow up to a HoF of 25l/s.

Percentage take proposed does not reflect the health of the deprived reach

39. The reasons related to river health and status outlined above are repeated.

40. Further, the EA's own methodology for EFI does not appear to take into account percentage take: the assumption is that, if Q95 is maintained, the river in the depleted reach will be judged as "supports good".
41. The percentage take imposed by the EA appears to be derived from Table A in its guidance [5/13], but MF maintains that is only supposed to be a starting point (contrary to para. 67 Emma Townsend [44/11]).

Unreal fish screening

42. It is accepted that the better the fish passage mitigation, the higher the permitted HoF and percentage take. Nonetheless, the submissions below are without prejudice to MF's primary position on the permitted HoF and percentage take.
43. The fundamental concern for MF is the proposed intake screen. He maintains that contrary to the assertions of the EA (para. 46 David Bartlett [46/11] & para. 65 Emma Townsend [44/11]), he has not proposed a screen at the head of the leat. The evidence he has supplied [47/6 & 48/11, 12] shows the extreme conditions in that location.
44. MF has been happy to deploy a kelt screen at the intake seasonally (when there are actually migrating fish to protect), to continue to operate the bywash at the end of the leat to enable any trapped smolt to escape, and to operate the tailrace screen seasonally [47/7-8].
45. As MF has set out in his witness statement, he and his family are committed stewards of the river, and take care to ensure that the fish are taken care of. The EA's approach to screening seems to proceed upon the basis that MF is not to be trusted, and has not operated the scheme sympathetically to date. The EA has given no credit for the fact that most of the screening provided by MF is voluntary.
46. As already trailed in this skeleton argument, the EA has approached this licence variation on the basis of a bunch of assumptions and "expert advice", without considering the situation on site (see, e.g. David Bartlett's statement at para. 16-19 [46/4]). Claims of "proportion" are ridiculous, the compensation the EA will pay for extinguishing this scheme will run to seven figures.

Wild cost benefit

47. The EA's cost benefit analysis (**CBA**) initially took the form of a confirmatory statement at section 7 of the LCPR [15/31], and has since been developed in the EA's SOC para. 8.7 [33/39], and at para. 95-100 of Emma Townsend's statement [44/16].
48. Apparently, the analysis was completed in August 2025 (EA SOC [33/40]) and assumes the WFD fish element is transformed from moderate to good over 18.7km, and an increase in flow, resulting in a benefit of £0.7m.
49. The EA has concluded that the cost of the works is £0.1m [33/40]. Apparently not including loss of power generation, as MF estimates that the figure would be at least 60% under the EA's current proposal, and 67% if a permanent bywash is required.
50. Obviously, MF takes issue with the benefit figure, since it is predicated upon the basis that the improvements suggested are a dead cert following the variation to the licence. The EA will need to admit they are not.
51. Further, MF takes issue with the cost calculations, which are out of touch with reality. MF relies upon the detailed costings amounting to £495,000-£792,000 of capital costs set out by Chris Elliott in his evidence at [49/17], with annual operational costs of £20,000. The EA has offered no evidence of cost whatsoever.
52. Further still, MF will take issue with the exclusion of the compensation due under s.61 WRA from the calculations. There is no statutory basis for the EA to shut its eyes to a cost which plainly falls to it under s.56(1) EA1995.

Climate impact

53. Plainly, on any analysis, MF's Hydroelectricity scheme provides a very substantial amount of clean carbon free electricity back to the electricity grid, and displaces a large amount of energy produced by fossil fuels.
54. MF maintains that the statutes listed further above require that the EA undertake an holistic environmental cost-benefit analysis which takes in the carbon cost to the environment of slashing the amount of electricity produced by at least 60%. Typical power generation at Old Walls under the current licence leads to a CO2 saving of approximately 54 tonnes per year.

LAW (COSTS)

55. Whilst there are no specific Inquiry rules relating to costs in an Inquiry under s.54(2) WRA, the general costs jurisdiction under s.250(5) of the Local Government Act 1972 does apply:

(5) The Secretary of State may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid, and every such order may be made a rule of the High Court on the application of any party named in the order.

56. The costs regime in respect of Compulsory Purchase and analogous proceedings is broader than that encountered in planning inquiries.

57. The relevant PPG entitled, "The award of costs and compulsory purchase and analogous orders", provides as follows:

Where objectors are defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, they may have costs awarded in their favour if the order does not proceed or is not confirmed.

Costs will be awarded in favour of a successful remaining objector unless there are exceptional reasons for not making an award. The award will be made by the Secretary of State against the authority which made the order.

Normally, the following conditions must be met for an award to be made on the basis of a successful objection:

(a) the claimant must have made a remaining objection and have either:

attended (or been represented at) an inquiry (or, if applicable, a hearing at which the objection was heard); or

submitted a written representation which was considered as part of the written procedure; and

(b) the objection must have been sustained by the confirming authority's refusal to confirm the order or by its decision to exclude the whole or part of the claimant's property from the order.

What orders are analogous to compulsory purchase orders?

In general an order or proposal will be considered to be analogous to a compulsory purchase order if its making, or confirmation, takes away from the objector some right or interest in land for which the statute gives them a right to compensation.

[analogous orders are then listed which do not include under the WRA]

58. In the recent case of *Harlow District Council v Powerrapid Limited (Rev1)* [2023] EWHC 586 (KB) Mr Justice Choudhury observed:

It is clear from these provisions in the PPG relating to CPO and analogous orders that "Costs will be awarded" in favour of a successful objector "unless there are exceptional reasons for not making the award". This creates a strong presumption, rebuttable only if there are exceptional reasons, that a successful objector will be awarded its costs, with no requirement, unlike the position with planning appeals and other planning applications, to establish unreasonable behaviour on the part of the other party. The rationale for that approach is obvious: a CPO involves the removal of property rights and the involuntary subjection of the landowner to a procedure for such removal. This contrasts with the position in respect of planning appeals where the landowner will be seeking to assert a right to deal with its property in a particular way without any risk (generally) of being deprived of ownership rights.¹

59. Aside from the specific rules which apply where an objector is being deprived of property rights, the SoS has the discretion under s.250(5) to order that the EA pay MF's costs.

APPLICATION - COSTS

60. Whether the CPO costs rules apply or not, MF seeks his costs of and occasioned by the s.53 process.

61. It is understood from correspondence between the EA and MF's agent that the EA accepts that it is required to pay MF's legal and surveyor costs under s.61 WRA if it is successful in imposing the new licence here, but not if it is unsuccessful.

62. To the extent that MF's costs are not covered by s.61 WRA, MF seeks an order from the SoS that the EA pays them.

63. If the Inspector is of the view that the specific CPO provisions apply, it would seem that an order for costs is a foregone conclusion.

¹ at 22.

64. If the Inspector does not consider that they apply, or if the EA maintains that the legal and surveyors costs of the whole process are not recoverable under s.61, MF will rely upon the following factors in seeking an order:
65. The EA, as a public authority, acts on behalf of the general public and derives its authority under the principle of 'the common good'. It is accepted that, in fulfilling this duty, the rights of individuals may need to be curtailed and it is not disputed that statutory law provides compulsory powers to allow this. What is disputed, in this instance, is the EA's disregard of the rights of the individual affected by exercise of the statutory powers. MF is operating lawfully within the terms of his current licence. Since 2007, approaches have been made by the EA regarding modification of the abstraction terms. These approaches became more serious in 2025 resulting in the service of a draft notice to which MF needed to respond within 28 days, of which just 21 were working days.
66. The EA has failed to compile an evidence base for the variation it seeks, and instead has sought to rely upon assumptions, a waste of time.
67. The EA did not properly consider the cost-benefit position, and the arguments it has advanced have been hollow and a waste of time.
68. MF also relies upon the following procedural failings:
- (a) made a number of errors in its s.52 notice and statements of case, including failing to correctly record MF's initials, incorrect spelling of Widecombe, references to Jordan Weir / leat (a different site) rather than Old Walls weir leat;
 - (b) failed to send all the correct documents with the s.52 notice;
 - (c) asked for, and was given, extra time to get their case together, despite telling MF in 2020 the s.52 notice was ready to go;
 - (d) failed to present the analysed survey data in their response to MF's SoC;
 - (e) failed to include condition 9.7 of the draft licence (maximum tailrace discharge velocity) in the s.52 notice.
69. MF maintains that in all the circumstances it is appropriate for a cost order to be made against the EA.

CONCLUSIONS

70. For the reasons set out above MF seeks that the SoS does not order the licence to be varied upon the proposed terms, and seeks an order that the EA pay his costs.

Adam Corbin

Barrister

Michelmores LLP

3 August 2026