



Neutral Citation Number: [2019] EWHC 597 (Admin) Case Nos: CO/4848/2017 &
CO/5921/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 13/03/2019

Before:

SIR ROSS CRANSTON
(Sitting as a High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF **Claimant**
THOMAS LANGTON
- and - **(1) THE SECRETARY OF STATE FOR** **Defendants**
ENVIRONMENT, FOOD AND RURAL
AFFAIRS
(2) NATURAL ENGLAND

Richard Turney and Ben Fullbrook (instructed by Richard Buxton Solicitors) for the
Claimant
Paul Luckhurst and Gayatri Sarathy (instructed by Natural England) for the 2nd
Defendant

Hearing dates: 28 February and 1 March 2019

Approved Judgment

Sir Ross Cranston:

INTRODUCTION

1. In earlier judicial review proceedings, I dismissed challenges to the Secretary of State's policy of supplementary badger control and to Natural England's grant in 2017 of 2 supplementary and 6 standard badger control licences: *R (Langton) v The Secretary of State for Environment, Food and Rural Affairs & Natural England* [2018] EWHC 2190 (Admin); [2019] Env LR 9 ("*Langton I*"). In broad terms Natural England was said to have issued the licences in breach of the Conservation of Habitats and Species Regulations 2010, SI 2010 No 490 by failing to carry out appropriate assessments of the impact of issuing the licences on protected bird sites.
2. Under the court order for *Langton I* the claimant was able to apply for permission to pursue additional grounds which had been adjourned and not considered at the hearing. On 25 September 2018 Whipple J gave permission to the claimant to proceed on these grounds; hence the current proceedings.
3. What is at issue now is the manner in which Natural England assessed the possible impacts of granting the 8 badger control licences in 2017 on ecological features within Sites of Special Scientific Interest ("SSSI") lying within the licence areas. There are 45 such SSSIs at issue in these proceedings. (Fourteen of these are constituent parts of Dorset Heathlands Special Protection Area ("SPA") and/or Poole Harbour SPA). The claimant submits that Natural England's approach to assessment when granting licences was fundamentally flawed in omitting certain species when it was deciding on licence conditions in respect of badger control operations in those 45 SSSIs. That resulted in the licences being granted in breach of its statutory duties.
4. Adopting what it characterises as an ultra-precautionary approach, Natural England has conceded that it may have fallen down as regards 3 SSSIs. It has amended the conditions attached to the relevant badger control licence. However, it rejects the claimant's case in relation to the other 42 sites. With 25 of these sites it contends that the alleged omissions would not make any difference to the conditions which it decided to impose on the licences; thus the claimant's case in relation to these sites is purely academic.
5. As in *Langton I* there was detailed evidence from both sides. In this case the evidence canvassed the position regarding the 45 SSSIs and the assessments Natural England conducted for badger control licences issued for the areas in which they lie. For the claimant Mr Dominic Woodfield, the managing director of the ecological consultancy, Bioscan (UK) Ltd, applied to give evidence as he did in *Langton I*. Natural England objected to the admission of his witness statement for this hearing.
6. Concerned with whether his statement introduced new and unpleaded material, and with whether Mr Woodfield was giving opinion rather than expert evidence, Farbey J ordered an oral hearing of the application to admit Mr Woodfield's statement. At a hearing Julian Knowles J ordered that the statement be admitted in as much as the trial judge considered it relevant and useful. I was content those preconditions were met when Mr Turney drew on the statement in the course of his submissions.
7. For Natural England there were two witness statements from Mr John Finnie, Principal Adviser on terrestrial protected sites in its Strategy Implementation Team. He has led on training and the preparation of guidance on SSSIs in Natural England

and for many years has lectured on the subject in the University of London. There were also two statements from Mr Ivan Lakin, an ornithologist specialist at Natural England.

8. The current proceedings involved detailed consideration of what Natural England had assessed at the 45 SSSIs. This imposed a considerable burden in writing the judgement. In granting permission for the case to proceed, Whipple J had in my view correctly identified the burden the proceedings imposed: “I am very concerned about costs and time and about the fact that this litigation has already had a significant amount of court time allocated to it”: [2018] EWHC 3828 (Admin), [11]. She underlined the need for every effort to be taken to ensure that the case was determined proportionately and without undue fuss or expenditure: [13]. Her order reminded the parties of the need to deal with the claim proportionately.
9. Whipple J’s order contemplated that the pleaded issues in the case would be consolidated into a “Scott Schedule” to make the hearing more manageable. That was done. The schedule is attached to the judgment. The first and second columns identify the SSSI. Column 3 refers to the species said to be omitted from assessment at the site. The parties’ pleaded positions on the status of the alleged omissions are set out at column 4 for Natural England and columns 6, 8 and 9 for the claimant. Columns 5 and 7 set out the parties’ case on Natural England’s no difference cases. The schedule was of considerable value in highlighting the parties’ case on each SSSI, although it could not preclude reference to the detailed evidence for each.
10. At the hearing I emphasised that it was not the court’s role to micromanage the actions of Natural England or any other public body. In this context I am conscious that the claimant has new proceedings in the pipeline challenging badger control licences issued in 2018. Consequently what I have done (with the assistance of counsel) is to identify cases which the court need never consider because of the no difference principle. Further, I have enunciated some principles applicable to the interpretation of SSSI citations in identifying the features of special interest at the relevant sites.
11. During the proceedings I was informed that the parties had attempted ADR; that is clearly a desirable course in this type of case, even if only to winnow out cases which, because they raise issues of principle, demand the court’s attention.
12. Finally, I should note that following the judgment in *Langton I*, Natural England produced *Guidance on evaluating the ecological consequences of badger culling on European sites*, 2018. Assessors are now required to document the reasons that there would be no adverse effect on the integrity of sites outside badger control areas. Any European site within 20km of a licence area must be addressed, even if the conclusion is that there would be no adverse effect on the site. Natural England has also decided to apply a condition to some sites which enables it to require licensees to carry out additional fox control if existing levels are considered insufficient.
13. There were written submissions from the parties during and following the current hearing about the guidance. In as much as the argument was whether the guidance contains a significantly different approach to what was Natural England’s position at the time of *Langton I* it was not relevant to the issues before me. Otherwise the submissions underlined those already made by the parties at the hearing apart from the guidance.

14. The general character of Natural England's licensing of badger control was described in *Langton 1*. It is sufficient to note here that licences cover geographical areas and are numbered sequentially according to the date they were initially issued. The first licences were issued in 2012 and further licences have been issued in subsequent years. To date, 32 licences have been issued. Apparently they cover about a tenth of the land surface of England.
15. When licences are issued conditions may be imposed to protect wildlife, for example, to prohibit shooting in specific areas during the bird breeding season where breeding birds are a feature; to prohibit shooting next to intertidal areas used by large flocks of water birds; and to restrict vehicle movement and trap placement in respect of butterfly and other invertebrate populations.
16. The system of identifying and protecting areas of scientific interest across the country, SSSIs, began in 1949 with the Nature Conservancy Council, later English Nature, now Natural England. It was placed on a firmer statutory basis under the Wildlife and Countryside Act 1981. In England Natural England can notify land as a SSSI which in its opinion is of special interest by reason of its flora, fauna, geological or physiographical features. It can confirm the notification after considering any representations it receives about the notification. Confirmation leads to the publication of a citation about the site. Land can be notified as an SSSI even in private ownership. An SSSI attracts protection against operations which might potentially damage it, the protective measures varying with the site. Natural England also notifies owners and occupiers of its views on how the site is to be managed. There are some 4000 SSSIs in England.
17. Citations for SSSI are published on Natural England's website. Modern SSSI citations provide a statement at the beginning of the document of the "Reasons for notification". In addition there is a "General description" of the site. There are only 2 modern citations among the 45 SSSIs at issue in these proceedings. The remaining 43 are older citations, which do not demarcate by use of headings the reasons for notification from any broader description of the site.
18. Accompanying the citations on the website is a map of the SSSI, along with the list of Natural England's "Operations Likely to Damage" the site (often referred to as "OLDs") and its "Views about Management" (often abbreviated as "VAM"). OLDs typically include a prohibition on killing, taking, removing, or disturbing any wild animal or its nest, eggs or place of shelter. In his first witness statement, Mr Finnie states that this broad prohibition would be relevant to direct damage to invertebrates, not only to mammals (which include bats) and birds. It would also be relevant to indirect effects on a range of features of special interest through the potential loss of pollination, dispersal, or vegetation control provided by animals. With VAMs, Mr Finnie's evidence is that Natural England's practice and the practice of its predecessor bodies has been to provide broad advice about the management of the whole site.
19. There are *Guidelines for the Selection of Biological SSSIs* (JNCC, 2013) which contains the criteria for site selection. There was a previous edition of the guidelines published in 1989. At paragraph 2.7 of the 2013 Guidelines the principle behind designation is said to be "to protect all the component parts of the habitat within an SSSI, and all the species within those habitats in the SSSI". Later the guidelines state

that “the total botanical value may... be marginal, but, when faunal interest is assessed, the combined value may be judged as meeting the required standard” (para. 7.2). I return to the guidelines below.

LEGAL FRAMEWORK

20. The law relating to badger licencing was set out in *Langton I*: see [81]-[91]. In brief, the Protection of Badgers Act 1992 contains general prohibitions on the taking, injuring and killing, and other interference with badgers, but section 10(2)(a) provides for licences to be granted to kill or take badgers, or to interfere with a badger sett, for the purpose of preventing the spread of disease. Licences may be subject to conditions. The Secretary of State has authorised Natural England to exercise this licensing function.

SSSIs: legislation

21. Part II of the Wildlife and Countryside Act 1981 (“the 1981 Act”) is entitled Nature Conservation, Countryside and National Parks. Notification of SSSIs is dealt with in section 28. Relevant parts are as follows:

“28 (1) Where Natural England are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of Natural England to notify that fact—

- (a) to the local planning authority (if any) in whose area the land is situated;
- (b) to every owner and occupier of any of that land; and
- (c) to the Secretary of State...

(4) A notification under subsection (1)(b) shall also specify—

- (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, and
- (b) any operations appearing to Natural England to be likely to damage that flora or fauna or those features, and shall contain a statement of Natural England's views about the management of the land (including any views Natural England may have about the conservation and enhancement of that flora or fauna or those features).”

There then follows the subsection governing confirmation of the notification, whether with or without modification: s.28(5).

22. Section 28A contains provisions for the variation of the matters in a confirmed notification by adding to them, changing them, or removing matters. Notice has to be given to landowners as under section 28. Natural England then has to decide whether to confirm the variation. Section 28D provides for the de-notification of SSSIs where all or part of the SSSI is not of special interest by reason of any of the matters mentioned in section 28(1).

23. In broad terms section 28E prohibits the owner or occupier of land included in a SSSI from carrying out any operation specified in the notification without Natural England's consent: ss.28E(1), (3)(a). Consent under subsection (3)(a) may be given subject to conditions and for a limited period: s.28E(4).
24. Section 28G imposes a duty on government departments, local authorities and public bodies (including Natural England) to safeguard SSSIs:
- “28G. Statutory undertakers, etc.: general duty.
- (1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.
- (2) The duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.”
25. Under section 28H a section 28G authority must generally obtain the assent of Natural England before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest: ss.28H(1), (3). There is a general prohibition in section 28H(4)(a) against the authority carrying out the operations against Natural England's assent, although exceptions are set out in sections 28H(5)-(6).
26. Section 28I provides for where the permission of a section 28G authority is needed before operations may be carried out. Under section 28I(2) before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest, it must give notice of the proposed operations to Natural England. The authority must take any advice received from Natural England into account in deciding whether or not to permit the proposed operations, and if it does decide to do so, in deciding what if any conditions are to be attached to the permission.
27. Section 28P creates certain offences.
- “(1) A person who, without reasonable excuse, contravenes section 28E(1) is guilty of an offence and is liable on summary conviction, or on conviction on indictment, to a fine.
- (2) A section 28G authority which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest
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- (a) without first complying with section 28H(1), or

(b) (if it has complied with section 28H(1)) without first complying with section 28H(4)(a).

(3) A section 28G authority acting in the exercise of its functions which, having complied with section 28H(1), fails without reasonable excuse to comply with section 28H(4)(b) is guilty of an offence and is liable on summary conviction, or on conviction on indictment, to a fine...

(5A) A section 28G authority which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest—

(a) without first complying with section 28I(2), or

(b) where relevant, without first complying with section 28I(4) or (6),

is, unless there was a reasonable excuse for permitting the carrying out of the operation without complying, guilty of an offence and is liable on summary conviction, or on conviction on indictment, to a fine...

(6) A person (other than a section 28G authority acting in the exercise of its functions) who without reasonable excuse—

(a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land is of special interest, or intentionally or recklessly disturbs any of those fauna, and

(b) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest, is guilty of an offence and is liable on summary conviction, or on conviction on indictment, to a fine.”

SSSIs: case law

28. *R (Aggregate Industries) v English Nature* [2002] EWHC 908 (Admin); [2003] Env LR 3 was a challenge to the notification of the site on human rights grounds. In the course of his judgment, Forbes J said at paragraph 106(iii) that the discharge of its statutory duty under section 28 of the 1981 Act required English Nature

“to exercise its expert judgment on technical and scientific matters as well as on policy issues: so far as concerns the factual and technical aspects of that process, English Nature is far better placed and qualified than a court to make the requisite assessments and value judgment...”

Later in the judgment Forbes J said that to assert that the site did not qualify as an SSSI, because the guideline figure for a relevant bird species has not been met, was to treat the guideline as if it were a criterion to be used as a substitute for judgment: [125].

29. In *R (Fisher) v English Nature* [2003] EWHC 1599 (Admin); [2004] 1 WLR 503, the claimant challenged a decision of English Nature (Natural England's predecessor) to confirm notification of an SSSI over his farm land. Lightman J held that once the statutory criteria in section 28 of the 1981 Act had been satisfied, English Nature had no discretion to depart from a course of notification and confirmation: [18]. At paragraph [21] he said that

“the duty of English Nature to exercise its own judgment and notify and confirm in accordance with its expert judgment cannot and should not be qualified by its own past practice or by provisions in the guidelines.”

Forbes J held that English Nature's decision was not irrational in public law terms or disproportionate under Article 1 of Protocol 1 of the European Convention on Human Rights Protocol 1 Art 1: [26]-[27], [40]-[47].

30. The Court of Appeal dismissed an appeal: [2004] EWCA Civ 663; [2005] 1 WLR 1267. In the course of his judgment, with which Auld LJ and Pumphrey J agreed, Wall LJ said that the Guidelines were “plainly the product of much careful thought and research”: [49].
31. *R (Seiont, Gwyrfaï and Llyfni Anglers' Society) v Natural Resources Wales* [2015] EWHC 3578 (Admin); [2016] PTSR 505, was a case of environmental damage. In the course of his judgment Hickinbottom J referred to the SSSI at issue. The final sentence of its citation described species associated with the site, namely “Otters”, “wildfowl”, and that it was “one of the most important spawning sites for salmon and sea trout in north Gwynedd”. At paragraph 37 he said that “the features identified as leading to that designation [were] two, namely (i) its rare and genetically distinct charr population, (ii) the presence of the nationally scarce Luronium natans (floating water plantain)- although the exposure of geologically important Cambrian rock sequences at the site was also noted.”

Other legislation

32. Section 2(1) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”) sets out Natural England's general purpose, to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development. That includes promoting nature conservation and protecting biodiversity, and contributing in other ways to social and economic well-being through management of the natural environment: ss.2(2)(a), 2(2)(e). “Nature conservation” means “the conservation of flora, fauna or geological or physiological features”: s.30(1).
33. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015, 2015 SI No 810 (“the 2015 Regulations”) implement Directive 2004/35/EC. “Protected species” is defined in regulation 2 (1) by cross referencing to those species protected under other European instruments. As regards environmental damage to a SSSI, regulation 4 (2) and Schedule 1, paragraph 4 states:

“(1) In the case of a site of special scientific interest, the damage must be to

(a) the species or habitats notified under section 28 of the Wildlife and Countryside Act 1981; or

(b) a protected species or natural habitat.

(2) The damage must have an adverse effect on the integrity of the site (that is, the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats or the levels of populations of the species affected).”

34. European protected species are independently protected under domestic legislation. For example, bird species listed in Annex I to the Birds Directive 2009/147/EC are protected under the 1981 Act from killing (section 1(1)) and being disturbed while in, on, or near a nest (s.1(5)). Bats and otters amongst other species are protected from killing (s.9(1)), from the destruction of places of shelter, from disturbance whilst occupying a place of shelter, and from obstruction of access to places of shelter: s.9(4). Various European protected species are further protected from disturbance by regulation 43(1) of the Conservation of Habitats and Species Regulations 2017, 2017 SI No 1012. (These replace the 2010 Regulations mentioned earlier.)

THE ISSUES

35. The claimant’s case is that badger control operations risk harm to bird populations through the risk of fox predation (fewer badgers, more foxes) and disturbance. There are other risks such as to invertebrates through damage or disturbance to them or their habitats and to mammals such as bats. In assessing the risks in the 45 SSSIs, the claimant contends that Natural England omitted relevant interest features which could be adversely affected by operations under the licences. These flaws give rise to legal errors in the grant of the badger control licences in that Natural England failed to have regard to its statutory duties and to legally relevant considerations.
36. In considering the claimant’s case, the 45 SSSIs at issue fall into three categories, those where the licence conditions have been amended, those where Natural England contends that the “no difference” principle applies, and those where the SSSI citation for the site needs to be interpreted to identify whether Natural England has taken all special features into account in the licensing process.

Amended Conditions: 3 Sites

37. In response to the claim, Natural England reviewed the 45 SSSIs at issue to identify any at which there had been an omission of a feature of special interest, and where that omission or arguable omission would make a difference to the conditions imposed on badger control licences. The review identified three such sites. Natural England amended the licence conditions for two of them at the pre-permission stage. (With the third the issue was whether the licence condition corresponded to the location of the relevant species within the site.) The claimant submits that this means that there was at least one season of badger control without (it seems) any consideration of the damage done during that period. The three areas are as follows.

Licence Area 16, Dorset, Site 24, Lulworth Park and Lake SSSI

38. The review concluded that there had been an omission from the SSSI spreadsheet of a feature of special interest, namely a lake supporting water-birds. On 17 September 2018 (before Whipple J gave permission) the claimant was informed that a prohibition would be imposed on shooting within 200m of the lake.

39. The claimant contends that there have been two seasons without that condition. I accept Natural England's evidence that the very low intensity of licensed activity means that there is only a low probability that any shot at all was fired within 200m of the lake and to the extent that any shots were fired this negligible additional activity would not have resulted in any credible risk of an adverse effect on the populations using the lake.

Licence Area 17, Somerset, Site 39, The Quantocks SSSI

40. The claimant contended that although woodland breeding birds had been assessed, there were others which used the periphery of the woodland when breeding which had not been assessed. Natural England extended the prohibition on activity in woodland areas to a general prohibition on shooting during the bird breeding season at the site. However, no shooting can take place during the bird breeding season so the issue is academic.

Licence Area 19, Wiltshire, Site 44, Cranbourne Chase SSSI

41. Natural England assessed plants and invertebrates at the site. The claimant contended that it should have assessed breeding birds. Natural England accepted this as a reasonable argument and wrote to the claimant on 17 September 2018 that it would impose a licence condition to prohibit badger control in the bird breeding season. In fact licensed activity had not taken place during the bird breeding season so the issue was academic.

No Difference: 25 Sites

42. In my view, Natural England was correct in its submission that the court should exclude from consideration sites where an omission to assess would make no difference, in other words, where it would not result in the conditions applied to the badger control licences being different. (All the no difference cases are licence condition cases.) An example of the no difference principle in practice would be if an SSSI has a breeding bird species as a feature of special interest. Natural England's standard practice is to prohibit shooting during the bird breeding season. Even if Natural England should have assessed similar breeding bird species at the same site and did not this would be a no difference case because the measures taken would be the same, the prohibition of shooting during the bird breeding season.
43. The legal basis of the no difference principle is twofold. First, under section 31(2A) of the Senior Courts Act 1981 the court must refuse relief in cases where it appears to be highly likely that an alleged omission would not have resulted in a substantially different outcome: see *R (on the application of Williams) v Powys CC* [2017] EWCA Civ 427; [2018] 1 W.L.R. 439, [74]. Section 31(2A) is not restricted to conduct of a procedural or technical kind and can include a failure to consider a matter: *R (Goringon-Thames Parish Council) v South Oxfordshire DC* [2018] EWCA Civ 860; [2018] 1 WLR 5161, [47], *Langton 1*, [141].
44. Secondly, this statutory power should be seen against the background of the court's general disinclination to give advisory opinions and its discouragement of academic points: *Rusbridger v Attorney General* [2003] UKHL 38, [2004] 1 AC 357, [35], Lord Hutton; *R (Howard League) v Secretary of State for the Home Department* [2002] EWHC 2497 (Admin), [140], per Munby J. One reason for this is the need to allocate resources proportionately: *R (C) v Nottingham City Council* [2010] EWCA Civ 790, [37], per Jackson LJ; *R (Raw) v Lambeth LBC* [2010] EWHC 507 (Admin), [53]-[54],

per Stadlen J. To take academic points in one case may encourage others to bring similar claims in other cases when the court is already hard-pressed with its caseload.

45. Before and in the course of the hearing the claimant accepted that the no difference principle applied to many of the sites albeit, as Mr Woodfield put it, serendipitously. For example, the claimant raised the position of bats at *Licence Area 15, Dorset, Site 9, Berry Head to Sharkham Point SSSI*. Bats at the site had been assessed as part of South Hams Special Area of Conservation (“SAC”) and shooting and lamping activities were prohibited. The claimant pointed out that there was no prohibition on going within 20m of the site, a condition applied in relation other sites with protected bat populations. Natural England replied that the 20m cordon was unnecessary since the cave entrances used by bat colonies existed well inside the site boundary. The claimant accepted the point at the hearing.
46. There were also two sites where the claimant accepted at the hearing that the no difference principle was now engaged. These were in *Licence Area 16, Dorset Site 15, Blue Pool and Norden Heaths SSSI and Site 21, Hartland Moor SSSI*. The issue arose because he did not accept that the word “avoid” in the licence conditions would necessarily be understood by licensees as a prohibition. Natural England submitted that there was no confusion about the meaning, but in the interests of not spending further time or costs on the issue it said (in a letter to the claimant of 14 February 2019) that it would add a note to licences from the 2019 season explaining that “avoid” was a prohibition.
47. With nine sites in Licence Area 16, Dorset, the claimant contended that the no difference principle was no more than arguably engaged because he believed that over-wintering Dartford warblers could be impacted by shooting activity. These sites are *Site 13, Black Hill Heath SSSI; Site 16, Brenscombe Heath SSSI; Site 23, Holton and Sandford Heaths SSSI; Site 30, Povington and Grange Heaths SSSI; Site 31 Rempstone Heaths SSSI; Site 33, Stokeford Heaths SSSI; Site 34, Studland and Godlingston Heaths SSSI; Site 35, Turner’s Puddle Heath SSSI; and Site 38, Winfrith Heath SSSI*. The same applied to woodlark at Sites 23, 30, 33, and 38.
48. These SSSIs are part of the Dorset Heathlands SPA. It was assessed for Dartford warbler and woodlark in 2017. Some of these sites were also assessed for Dartford Warbler and/or woodlark at SSSI level. The conclusion was that there would be no adverse effect on these species, taking into account the nature of licensed activities and an agreed prohibition on shooting during the bird breeding season. In *Langton I* I accepted Natural England’s evidence that at Dorset Heathlands SPA licensed activities were relatively infrequent, there was a heavy recreational use of the heathlands, the bird populations on the heathlands were generally widely dispersed, and the occasional disturbance of an individual bird was unlikely to have populationlevel effects: [151(ii)]. Consequently, I found that the claimant did not succeed in that part of his judicial review claim: [152]. Subject to any appeal, that finding stands.
49. That leaves 5 sites, all in Licence Area 16, Dorset, where Natural England argues that the no difference principle applies. With 4 of these the claimant takes the opposite view because in his submission butterflies or other invertebrates are not protected by the licence conditions restricting the placement of traps to existing sett footprint or areas of scrub.

50. Thus, at *Site 12, Black Hill Down SSSI*, the claimant submits that Natural England only assessed marsh fritillary butterflies, yet there are scrub/scrub edge butterfly species such as the small blue. The same point is made for *Site 18, Court Farm Sydling SSSI* and *Site 37, White Horse Hill SSSI*. Permitting the laying of traps in scrub, the claimant submitted, had potential damaging effects on butterflies using scrub as foodplant, whether it be the digging in of the traps, the associated trampling or the regular visiting to see what has been caught. At *Site 17, Corfe Meadows SSSI*, the claimant contended that invertebrates there may include scrub species.
51. In his second witness statement Mr Lakin, an ornithologist at Natural England, states that placement of the traps in areas of scrub will typically be underneath plants and often upon largely bare, shaded ground. Bushes will not be dug up or cut down. Thus, there will not be any material damage to scrub habitats which support invertebrate communities, including butterflies. Mr Lakin also calculates that the affected area within a badger control licence area is equivalent to that of one beach towel per 198 Premier League football pitches, over a short period each year.
52. On this issue Mr Turney submitted that this comparison could not be taken at face value. We do not know where the traps will be in relation to the special features of the site. Evidence in *Langton I* was that shooting and trapping operations are clustered around badger setts and can typically involve 8-10 repeat visits over a short period. Mr Turney also made the point about the workability of conditions relying on contractors, who are not conservationists, to make judgments about avoiding the special features of a SSSI.
53. Notwithstanding this, it seems to me that the chances of such activity materially impacting any scrub habitat, or any butterfly population that might utilise this habitat, are negligible. For similar reasons to those in *Langton I* there is no reviewable flaw in Natural England's decision-making. It could reasonably conclude that potential disturbance from badger control operations would not have significant adverse effects: see *Langton I*, [149].
54. As a footnote to this issue, from the 2019 season the standard licence condition applicable to all butterfly species will be: "All vehicles must be restricted to existing tracks. Limit location of traps to existing sett footprint or areas of scrub". Natural England considered that this was in the interests of clarity for licensed operators and ease of administration for assessing officers. Mr Lakin's evidence was that an invertebrate specialist had been consulted and supported the standard condition. Just prior to the hearing there was correspondence between the parties about this matter. In my view it does not take the matter any further for the purposes of this case.
55. Under this head the claimant also raised that issue of bats at *Site 19, Creech Grange SSSI*. I accept Natural England's submission that the claimant's complaints (which have varied over time) are academic. In his first witness statement Mr Lakin explains that the site is an outbuilding – the loft space is used by bats - surrounded by a complex of buildings, gardens and tracks. No licensed activities will be taking place within the building or in its vicinity.

Features of special interest: the remaining 17 sites

56. Natural England has a duty under section 28G of the 1981 Act to take reasonable steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which a SSSI is of special scientific interest.

These are the special features leading to notification of a SSSI under section 28 of the 1981 Act. The section 28G duty applies when Natural England makes decisions on badger control licences.

57. Further, under the general law Natural England must take relevant considerations into account when deciding on the grant of badger control licences. Relevant considerations are considerations which are so obviously material to the decision that the legislation intends that they be taken into account: *Re Findlay* [1985] AC 318, 333-334, per Lord Scarman; *R (on the application of Hurst) v HM Coroner for Northern District London* [2007] UKHL 13; [2007] 2 AC 189, [57], per Lord Brown. In the context of SSSIs, statute in the form of section 28G provides a guide as to which considerations, as a matter of law, meet this test. In other words, relevant considerations are those special features leading to the notification of a SSSI.
58. Thus, as a matter of statutory and common law, Natural England must in licensing badger control focus on the special features of a SSSI. Discharge of those duties may require the imposition of conditions in some cases, ultimately the refusal of licences in others. The issue then becomes what are the special features of an SSSI which must be assessed in relation to the grant of badger control licences, in other words those which led to its notification. In my view, these are the features to be found in the citation for a site which results from the notification procedure contained in section 28.
59. The claimant argued for a broader scope of assessment. First, he contended that the section 28G duty is not expressed by reference to the reasons for notification (although these may provide best evidence of the special features) and that consideration must be given to the actual interest of the site, which in some cases may require investigation. In support he points to the denotification procedure in section 28D, which is not linked to the original reasons for notification but which reflects the fact that ecological interest is not static in time.
60. I do not accept this. As a matter of statutory interpretation, the duty in section 28G is focused on the special features. The language of this duty mirrors the wording of the special interest features notified under section 28(4)(a), and runs through other parts of Part II of the 1981 Act. These special features may change over time, but the statutory scheme contains the procedure in section 28A for renotification. This reflects the procedure in section 28 for the original notification in enabling landowners, the local planning authority and the Secretary of State to make representations and objections: s28A (3)-(5). Without renotification or denotification of a site the special features on notification remain as they are as a matter of law.
61. Secondly, the claimant pointed to the guidelines, in particular to paragraph 2.7 of the 2013 guidelines, that the principle behind designation is to protect all the habitat with a SSSI notification. That may well be the policy, but a general statement of policy of this nature cannot override the statutory and common law duties to which Natural England is subject. Their focus is the special features of a site, not all its habitat.
62. Thirdly, the claimant argued that assistance can be derived from other statutory provisions, in particular section 2 of the 2006 Act, the 2015 Regulations and European instruments. Under its constitutive legislation, Natural England's general purpose is, amongst other things, to promote nature conservation and to protect biodiversity. However, no duty flows from that statutory language additional to that in section 28G when Natural England grants badger control licences. Any general duty gives way to

the special duty. Moreover, that purpose in section 2 sits alongside another of Natural England's purposes, to contribute to social and economic wellbeing. Government policy is that badger control is doing that.

63. As to the 2015 Regulations, the claimant points to the extent to which they cover damage not only to notified species and habitats but to others within the SSSI. To my mind, this provides no assistance since the regulations perform a different function. Further, the fact that a species has European protected status says nothing about the quality of its representation at a particular site. It needs to be a special feature of a SSSI before it must be taken into account in decision making on badger control licensing.
64. There is no direct authority on the interpretation of SSSI citations. Both sides submitted that extraneous material to the citations could assist in their interpretation. The claimant contended that the OLDs and VAMs might identify or at least assist in interpreting them. In his submission, the specification of an OLD must be related to the special features for which the site is designated, so that if there is any doubt the OLDs will be indicative of those features. Similarly, the VAMs are also of assistance in indicating special features.
65. In my view an OLD or a VAM for a site will generally be of little if any assistance in interpreting a SSSI citation. OLDs identify matters which could affect special features but can be broad in scope. This is pursuant to their statutory purpose of ensuring that Natural England has the ability to influence how a site is used through the consenting function in section 28E. As to VAMs, the wording of section 28(4) expressly states that these can extend to management measures beyond the special features.
66. Natural England submitted that there could be reference to the guidelines to understand, for example, that a species mentioned in a citation was not a basis for notification because it did not occur in the quantity or density required in them. It also submitted that the court should be slow to move away from its interpretation of SSSI citations since it was the expert body with responsibility for issuing and interpreting them, citing in support *Silber J in R (Levy) v Environment Agency* [2003] Env LR 11, [77]-[79]. SSSI citations were not a statute or subordinate legislation, but were akin to non-statutory materials in the planning context. There the court has emphasized that it has a limited role in construing planning policy: e.g., *St Modwen Developments v Secretary of State for Communities & Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, [7], per Lindblom LJ; *Hopkins Homes Ltd v Secretary of State for Communities & Local Government* [2017] UKSC 37, [2017] 1 WLR 1865, [24]-[25], per Lord Carnwath.
67. There are a number of difficulties with Natural England's submissions. In *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85 Lord Carnwath was considering planning permissions. He accepted that they must be interpreted in their particular legal and factual context but added:

“One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. (Similar considerations may apply to other forms of legal document, for example leases which may need to be interpreted many years, or decades, after the original parties have disappeared or ceased to have any interest.) It must

also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well-established rules limiting the categories of documents which may be used in interpreting a planning permission (helpfully summarised in the judgment of Keene J in the *R v Ashford BC Ex p. Shepway DC* [1998] JPL 1073).”

68. To my mind the same applies here. SSSI citations can lead to legal consequences for persons other than Natural England. It is on the back of the special features in them that Natural England specifies operations in the OLDs of which landowners must be aware. It is the special features in citations which trigger the section 28G duty for government departments, local authorities and other public bodies to refrain from taking certain steps, and also the duties in the following sections such as in section 28I(2) to give notice to Natural England. Offences in section 28P are linked to the special features of a site set out in the citations.
69. Because SSSI citations can lead to legal consequences, there cannot be interpretations which require a detailed analysis of how, under the guidelines, notification of a site for its special features was made at some point in the distant past. The guidelines in my view are sometimes difficult to follow. In any event, the citations for many of the 17 sites at issue predate the 1989 guidelines. Further, there cannot be meanings of a citation which can only be divined through Natural England’s practices, which are not immediately apparent to others. As Lightman J observed in *R (Fisher) v English Nature* [2003] EWHC 1599 (Admin), [2004] 1 WLR 503 the expert judgment which Natural England exercises in this area “cannot and should not be qualified by its own past practice or by provisions in the guidelines.”
70. In my view citations are to be interpreted in the ordinary way by reference to their language, structure and context. The task is to identify in each citation the special features leading to notification. It is these to which Natural England must have regard under its section 28G and common law duties. The task is not always straightforward because SSSI citations frequently contain descriptions of other valuable features (mainly fauna and flora) present on the site. No doubt this has been done for good conservation reasons; there is nothing in section 28 which precludes it. I reject the claimant’s case that there is nothing in the statutory framework for arguing that parts of the citation are to be disregarded as purely descriptive.
71. In modern citations the features listed under the heading “Reasons for Notification” will generally be the features of special interest notified under section 28(4)(a) of the 1981 Act. Fauna or flora mentioned under the general description heading will generally not be features of special interest notified under that section because they do not appear under the “Reasons for Notification” heading. The older citations are more difficult. They sometimes contain a paragraph at the outset which obviously summarises the features of special interest. Moreover, if they refer to a species as being of national importance or significant this would be a strong indication that it was a feature of special interest. However, because a feature does not have national importance or significance in a citation does not preclude it being a special feature, as we will see.
72. With these points in mind, I turn to the 17 citations at issue in these proceedings.

Site 1, Severn Ham, Tewkesbury SSSI

73. The claimant's case is that the citation for the site is headed "Reasons for Notification". It notes in the second paragraph the resident lapwing, curlew and redshank, and in the third paragraph the uncommon plants such as great dodder. Yet Natural England only assessed two plant species. In his submission there is no distinction in the language used between the two plant species and the bird species except that the plants concerned "occur on the periphery". The claimant adds that the OLDs include a prohibition on the killing of birds, and the VAM refers to avoiding cutting hay in the bird nesting season.
74. The short citation for the Severn Ham site has only one heading, "Reasons for Notification". It begins with this paragraph: "One of the last remaining traditionally managed ham meadows overlying the alluvium of the Severn Vale and subject to annual winter flooding." There is then a longish paragraph about the grassland and flora, which opens with the statement that "the major habitat represented is that of neutral grassland" and contains mention of "the rare sulphurwort" at one area in the northern part. The final sentence to that paragraph reads: "Birds resident on the Ham include lapwing...curlew...and redshank..." The third, and final paragraph, has as one of two sentences the following: "Uncommon plants such as great dodder... and meadow rue... occur on the periphery of the site."
75. In my view, the citation for this site is a jumble and the assessment of Natural England somewhat difficult to understand. As to the citation, trying to distinguish between the reasons for notification and description is not assisted by the heading, which sweeps up everything under a reasons rubric with no mention of description. The citation focuses in the second paragraph on flora, referring to fauna in its last sentence, but reverts to flora in the third and last paragraph. I am just persuaded that the claimant is correct as regards this citation and that Natural England's assessment was deficient.

Site 2, Coombe Hill Canal SSSI

76. The claimant's case on this site is that Natural England only assessed "vascular plant assemblage" and "invertebrate assemblage". It omitted the bird interest of the site, although the citation records that the site is "locally important for its diverse breeding bird assemblage..." In his submission, the fact that the interest is of local and not national importance is not a reason to treat it as being other than part of the special interest of the site. He adds that the OLDs include a prohibition on killing wild animals, and the VAM refers to structural diversity of scrub land for the purposes of supporting bird species.
77. The citation has only one heading, "Description and Reasons for Notification." It begins:
- "This site is of special interest for its assemblages of nationally rare and scarce invertebrates and nationally scarce plants. It is one of the most important known wetland sites for these features within Gloucestershire."
78. There is then a paragraph on the canal; three paragraphs on invertebrates; one on nationally scarce plants (golden dock, corky-fruited water-dropwort, greater dodder,

true fox-sedge); and a final paragraph which states, in part: “The site is also locally important for its diverse breeding bird assemblage, particularly resident and migrant warblers...and waders such as curlew...and snipe...which frequent the wetter areas of the fen and ditch margins.”

79. It seems to me that the language of the citation draws a distinction between the assemblages of nationally rare and scarce invertebrates and nationally scarce plants (which makes it “of special interest”) in the opening sentence, and on the other hand the diverse breeding bird assemblage mentioned at the very end and which is “locally important”. The latter part of the citation is what would fall under the part of the heading, “description”. That the OLDs include a prohibition on killing wild animals, which includes birds, cannot elevate birds to a special feature of the site. The reference in the VAM to maintaining hawthorn scrub as supporting bird and insect species does not of itself make these species special features for the reasons given earlier.

LICENCE AREA 2 – SOMERSET

Site 3, Dunster Park and Heathlands

80. The claimant’s case on this site is that whilst Natural England assessed plants and invertebrates it did not assess bird interests. The “reasons for notification” refer to the faunal interest of the site as including invertebrates, giving the specific example of the heath fritillary butterfly, with the site description going on to explain that the fauna includes several colonies of the heath fritillary, along with nightjar and Dartford warbler. In other words, it does not distinguish between the rare butterfly and the birds and what is described as a very diverse breeding bird assemblage. Nightjar and Dartford warbler are “Annex 1” species to the Birds Directive, the claimant submits, a point recognised on the face of the citation. He adds that the VAM identifies specific bird interests (hobby and Dartford warbler) in referring to management of vegetation.
81. The citation for this site is one of two of the 17 in modern form. At the outset is the heading “Reasons for Notification”, the paragraph stating:
- “This site is notified for nationally important lowland dry heath, dry lowland acid grassland, wood-pasture with veteran trees and ancient semi-natural oak woodland habitats. The fauna of the lowland heath includes a nationally rare butterfly the heath fritillary *Mellicta athalia*. The assemblage of beetles associated with the veteran trees is of national significance.”
82. The heading “Description” is followed by six paragraphs. One contains the reference to the fauna of the site being lowland in nature and including several colonies of the heath fritillary, along with nightjar and Dartford warbler. The final paragraph states: “The assemblage of breeding bird associated with the parkland and areas of sessile oak woodland is very diverse and includes species such as wood warbler redstart... buzzard... and raven...”
83. The assemblage of breeding bird cannot be a special feature of the site. There is no mention of birds in the “Reasons for Notification”, which only occurs in the final paragraph of description. The reference in the VAM to the scattered mature Scots pine in undisturbed locations providing suitable nest sites for hobbies cannot assist, when under the legislation that document is giving advice on the management of the whole site and is not confined to the special features of the site.

Site 4, Bagmere SSSI

84. For this site, the claimant's argument is that Natural England only assessed plants and certain butterflies and no bird interests. His argument is that as part of a Ramsar site it has international importance for birds.
85. There is one heading in the citation for the site, "Description and Reasons for Notification". Its opening sentence reads: "The Meres and Mosses of the north west Midlands form an internationally important series of open water and peatland sites." The origin and character of the meres (pools) and mosses (peatland sites) are described over several paragraphs, along with the vegetation, woodland and grassland. The final paragraph contains this sentence: "The site supports an important breeding colony of small pearl-bordered fritillary butterfly *Boloria selene*; Bagmere is the last-known location in Cheshire for this nationally declining species."
86. There is no mention of birds in the SSSI citation, and that is the end of the matter. Even if the SSSI were part of a Ramsar site because of its bird interests - which Natural England refutes by reference to the Ramsar designation - that would go nowhere in terms of interpreting the citation to identify the special features as in section 28 of the 1981 Act and those which are relevant considerations for the purpose of decision-making on badger control licensing.

LICENCE AREA 14 – DEVON

Site 6, Gilmoor and Moorlands SSSI

87. The claimant's argument here is that Natural England only assessed plants, yet the citation refers to breeding tree pipit and woodlark, which are cited in Annex 1 to the Birds Directive, and breeding butterflies (including populations of the uncommon and declining marsh fritillary). In his submission there is no distinction in the language between the flora which is said to be "special", and the bird and invertebrate features which, as he characterises Natural England's case, are "less than special". The claimant adds that the OLDs for the site prohibit the killing or removal of fauna and the VAMs refer to management for bird species and for the "rare marsh fritillary".
88. The citation contains the heading, "Description and Reasons for Notification". It opens with this short paragraph: "This site comprises an area of unimproved herb-rich acidic grassland of a restricted community type, together with scrub and woodland; it is of importance for its high botanical interest." In the next three paragraphs there is reference to grasses, rushes and scrub. There are then two paragraphs, which reads in part:
- "Tree pipit...and the woodlark...have recently bred in the grassland areas, which also provide a hunting ground for barn owls...The breeding butterflies include good populations of the uncommon and declining marsh fritillary...small pearlbordered fritillary...silver washed fritillary...and brown hairstreak...In total twenty-eight butterfly species have been recorded."
89. The language in the three paragraphs referring to botanical features is not significantly different, as the claimant submits, from that in the final two paragraphs on the bird and butterfly life in the manner in which features are highlighted. In my view,

however, the opening paragraph places botanical features at the forefront and it is in that context that the whole of the citation is to be read. The OLD's direction regarding the killing or removal of wild animals does not advance the argument. The VAM advises that managed scrub is of great importance to birds and invertebrates of Culm grassland, and that management of the latter will be beneficial to the rare Marsh fritillary butterfly. But for the reason given earlier, VAMs range beyond special features and, without more, are of no assistance in defining them.

LICENCE AREA 15 - DEVON

Site 8, Froward Point SSSI

90. The claimant's case here is that only assessed plant species were assessed, whilst the citation refers to "a variety of bird species" including breeding seabirds. The claimant submits that there is no linguistic distinction between the plant species mentioned in the third and fourth paragraphs, and bird species mentioned in the fifth paragraph. Further, the OLDs and VAM refer to measures to protect fauna.
91. The citation for the site contains the heading "Description and Reasons for Notification" and begins: "This site is important for its coastal plant communities and in particular for the maritime heathland and grassland which support several local and rare species." There then follow paragraphs on the geology, grasses, plants and other vegetation. The fifth paragraph reads: "The range of habitats provides for a variety of bird species...Gulls *Larus spp.*, cormorant *Phalacrocorax carbo* and shag *P aristotelis* breed on the cliffs."
92. In my view the special features of this site are set by the first sentence, which refers to the local and rare species of plants. Birds do no feature, albeit that later there is a description that some breed on the cliffs. The OLD restriction on killing of wild animals goes nowhere near demonstrating that birds are special features. Nor does the VAM, in referring to the maritime grassland and heathland supporting a great diversity of plants and animals: that is general advice on management of the site.

Site 10, Torbryan Caves SSSI

93. The claimant contends that whilst Natural England assessed geological features, it did not assess impacts on bats which are mentioned both in the citation and the VAM. Bats, he adds, are a European protected species, and damage to bat interests within a SSSI would fall within the definition of "environmental damage" in the 2015 Regulations.
94. This short citation has one heading, "Description and Reasons for Notification". It begins: "This site comprises a series of caves, in a ridge of Devonian Limestone, that are of importance to the study and dating of Pleistocene fossil fauna. Several of the caves are also bat roosts." There are then three paragraphs on the caves and fossils: they "represent one of the most important Pleistocene localities in Britain and provide a clear sequence of the fossil fauna... Equally significant is the occurrence of the remains of species long extinct in Britain and seldom found as fossils in this country."

The final paragraph states: "The caves are also used by several species of bat: greater horseshoe... lesser horseshoe ... and long-eared... bats have been recorded at this site."

95. I accept Natural England's submission that the bats are not a special feature of this site. On its face the citation makes clear that it is the fossils which are pivotal. The bats are there, but that falls within the descriptive part of the citation. The matter is clear, and there is no need to refer to the language of other citations where Natural England accepts that bats are special features of a site. The VAM might contain advice on management useful to bats, but it does not show that they are special features. For reasons given earlier, that the bats are European protected species does not assist in interpreting the citation as to whether they are special features of this SSSI.

LICENCE AREA 16 - DORSET

Site 11, Bere Stream SSSI

96. Natural England only assessed plant species, submits the claimant, yet the citation refers to a number of species of fauna including kingfisher and otter. Kingfisher is identified in Annex 1 of the Birds Directive and otter is a European Protected Species appearing in Annexes II and IV of the Habitats Directive. The OLDs refer to animal species and the VAM specifically identifies otter and bird species. The only heading in the citation is "Reasons for Notification".
97. The citation for this SSSI begins that it is very typical permanent chalk-stream which has been maintained almost without management in recent years. The opening paragraph adds that the adjacent woodland and grassland have a rich flora and fauna. The next paragraph describes flora and fauna at the site, ending with the sentence: "Kingfisher *Alcedo atthis* occurs and Otter *Lutra lutra* is regularly recorded." There are further references to flora in the third paragraph.
98. Notwithstanding the heading to the citation, the language that Kingfisher "occurs" at the site, and that Otter is "regularly recorded", cannot constitute them as special features of the site. For the reasons already given the European protection, and the general reference to fauna protection in the other documents, do not take the matter further. Although not as clear as it could be, Mr Finnie's interpretation of the citation seems correct: the river habitat (described in the second and following paragraphs) is the special feature in that it is very typical.

Site 14, Blackmore Vale Commons and Moors SSSI

99. In my view the claimant is correct as regards this site, that although Natural England assessed plant species and invertebrates it should have assessed the nightingale *Luscinia megarhynchos*.
100. This citation has a section "Reasons for Notification", which in opening refers to the SSSI supporting "a diverse mosaic of semi-natural habitats, including unimproved grasslands, ancient semi-natural woodland and wood pasture, scrub, and an extensive network of hedges, with small wetlands, ponds and waterways. It is of special interest by reason of the following nationally important features that occur..." That is followed by a lengthy section headed "Description", divided into sub-sections. In one of these is this paragraph:

"In addition to the reasons for notification described above, the SSSI includes the Dorset stronghold of the nightingale *Luscinia megarhynchos* which breeds in the scrub and dense hedges found throughout the SSSI."

101. Natural England contends that since the reference to the nightingale does not fall within the “Reasons for Notification” section it cannot constitute a special feature. That belies the opening sentence of the reference to the nightingale, namely, “In addition to the reasons for notification described above...” Natural England reads this as meaning “In addition to what has been said above...” If that were the intention, the drafter could simply have said “In addition...” or dropped the opening clause completely.
102. By reference to the guidelines, Natural England then draws the contrast between nationally important features (the reference in the first paragraph), which might justify a notification, and those like the nightingale, which are only locally significant and would not. Earlier I explained that the guidelines will not generally be of assistance, even if in this respect they are clear in drawing a distinction between national and local significance (a point I prefer to leave open).

Site 20, East Coppice SSSI

103. The claimant’s case is that the only assessed impacts were on plants, but the citation refers to “exceptionally rich” invertebrate fauna and bird interests including nightingale, which is described as a scarce breeding species in Dorset. The VAM refers to measures to protect breeding birds.
104. The citation for this SSSI has only one heading, “Description and Reasons for Notification.” The opening paragraph states that it is “a rare example of ancient woodland which has been continuously managed as coppice to the present day.” It continues: “The ground flora of this wood and its fauna, particularly its invertebrates are very rich, and include some rarities, reflecting this continuity of management.” There several paragraphs on the flora. The final paragraph focuses on fauna, including “the rare and attractive leaf rolling weevil *Byctiscus betulae* and another uncommon beetle *Apoderus coryli*.” The final sentence refers to birds of the site being typical of coppice woodland, including “Nightingale *Luscinia megarhynchos*, a scarce breeding species in Dorset.”
105. Given the language of the citation, nightingale is not a special feature, albeit a scarce breeding species in Dorset, when it is “typical”. The “rare” and “uncommon” invertebrates are different. In this regard Natural England invokes the no difference principle. For the reasons already given as regards Site 17 I accept its submission.

Site 27, Oakers Wood SSSI

106. On the claimant’s case Natural England should have assessed butterflies and the breeding wood warbler. He rejects Natural England’s no difference defence in respect of the butterflies for the reasons advanced as to the adequacy of those measures in other sites. Again, the only heading in the citation is “Reasons for Notification”.
107. The SSSI citation begins with the description that Oakers Wood Valleys as predominantly acid oak woodland. Its flora “has many elements typical of ancient woodland including some uncommon species” and that it also has “a rich fauna”. The second paragraph is a detailed description of the flora, with a final sentence which reads that “this site is especially important for the rare Narrow-Leaved Lungwort, *Pulmonaria longifolia* which favours the more open areas.” The third paragraph states: “The lichen flora of Oakers Wood is of particular interest...Oakers Wood is the only locality in England for the rare *Arthonia zwackii* var *zwackii*.” The final paragraph reads:

“Open areas in close proximity to the woodland are especially favourable to butterflies and there are strong populations of White Admiral *Limenitis camilla*, Silver Washed Fritillary *Argynnis paphia*, Pearl Bordered Fritillary *A. euphrosyne* and Small Pearl Bordered Fritillary *Argynnis selene*. Wood Warbler *Phylloscopus sibilatrix*, an uncommon breeding bird in Dorset, nests here.”

108. I am persuaded that the wood warbler is a special feature of the site, the reference to it being an “uncommon breeding bird in Dorset”. Similarly with butterflies, I read the reference to “strong populations” as constituting them as a special feature as well. Certainly those descriptions contrast with references to “the rare Narrow-Leaved Lungwort” among the flora, and the “rare *Arthonia zwackii* var *zwackii*” among the lichens. In both cases, however, the heading to the body of the citation - “Reasons for Notification” - tips the balance.

Site 28, Piddles Wood SSSI

109. The claimant’s case on this site is that Natural England assessed plant species, but the citation refers to a “rich insect fauna” (in particular, the wood white butterfly) and breeding nightingale which were not assessed. He also points out that the only heading in this relatively short citation is “Reasons for Notification”.
110. The opening paragraph of the citation reads in part:

“This substantial oak woodland lies on raised ground immediately south of the River Stour in north Dorset...Rich and diverse communities of plants and animals typical of oak woodland in Dorset occur...”

There is then a long, second paragraph about the floristic composition of the woodland habitats. The final paragraph reads in part:

“Piddles Wood supports a rich insect fauna. The open glades and rides favour many of the typical woodland butterflies including White Admiral *Limenitis camilla*, Silver-washed Fritillary *Argynnis paphia* and the very local Wood White *Leptidea sinapis*. The commoner woodland birds are present in good numbers and among the breeding species is Nightingale *Luscinia megarhyncha* which is local in Dorset.”

111. In my view, despite the heading, the claimant is not right as regards the nightingale (“commoner woodland birds”/“local in Dorset”). Given the heading to the citation, coupled with the adjective “rich” and the reference to “very local”.
112. However, he is correct that the Wood White butterfly species is a special feature and should have been assessed. In the Scott Schedule Natural England stated that licence conditions restricting vehicles to existing tracks and limiting traps to existing sett footprints or areas of rhododendron were sufficient to avoid damage to the Wood White. The claimant does not answer this point and so the no difference principle applies.

113. The claimant's case is the whilst Natural England assessed plants and invertebrates it did not assess birds or mammals, including Annex 1 bird species (e.g. kingfisher, Bewick's swan etc) and European protected species (e.g. otter). The language of the citation (e.g. "valuable breeding habitat for riverine and wetland birds") and the OLDs and VAM all support the consideration of impacts on birds and mammals. 114. The opening paragraph of the lengthy citation for this SSSI reads, in part:

"The River Frome is the most westerly example of a major chalk stream in Great Britain. The SSSI section (Dorchester to Wareham) supports an aquatic and bankside vegetation which shows a downstream transition from a purely chalk stream community type to a lowland, mixed geology community in the lowermost reaches...The site also supports rare and scarce aquatic invertebrates, a characteristic assemblage of breeding riverside birds..."

115. There are then two paragraphs later in the citation headed "Birds". The opening sentence states that the Frome and its adjoining vegetation provide valuable breeding habitat for riverine and wetland birds. A short paragraph headed "Mammals" notes that all three species of native aquatic mammal have been recorded on the River Frome, including otter.

116. Adopting the interpretative principles outlined earlier the bird life of the River Frome is not a special feature. That the assemblage of breeding riverside birds is "characteristic" of the river hardly elevates them to that status. It contrasts with aquatic invertebrates, which are "rare and scarce". Nothing said in the two paragraphs about birds takes the matter further. The manner in which otter are mentioned does not indicate that they are a special feature. For reasons already given, the OLDs and VAMs are of no assistance when the citation itself is clear.

LICENCE AREA 19, WILTSHIRE

Site 40, Bowerchalke Downs SSSI

117. The claimant's case is that although Natural England assessed plant species and one butterfly species, the citation refers to three other butterfly species and a range of bird species, and the special interest of these features is supported by the OLDs and VAM.

118. The citation has the heading "Description and Reasons for Notification" and begins:

"This site is an extensive area of floristically rich chalk grassland, a habitat which has become increasingly scarce due to agricultural intensification. It lies along an escarpment of the Middle Chalk overlooking the Ebbles Valley in South Wiltshire and has slopes of several aspects. Present on the site are plant and animal species with a nationally restricted distribution."

The next three paragraphs deal with flora. The fifth states that the grassland supports a variety of butterfly species, including dingy skipper, dark green fritillary and common blue, adding that the Adonis blue is also found which in Britain is confined to a limited number of chalk and limestone grassland sites in the south. The final

paragraph names a number of bird species, which the citation says are “typical of this habitat.”

119. On this language it is evident that butterfly species other than the Adonis blue are not special features of the site. Nor are the birds mentioned in the citation.

Site 41, Hang Wood SSSI

120. The claimant submits that there was a gap in Natural England’s assessment since the citation refers to potential ornithological interest and a “diverse invertebrate fauna”. Reference is made to the OLDs and VAM as regards the impacts on fauna.
121. The “Description and Reasons for Notification” begins that Hang Wood “is a botanically rich woodland and is representative of the wet ash maple and acid pedunculate oak-hazel-ash woodland types.” A number of paragraphs refer to the flora. There are two short final paragraphs, the first stating that “ornithological interest is not well documented but the wood is possibly one of the few Wiltshire breeding sites for both buzzard and wood warbler”, the second that “diverse invertebrate fauna is likely to frequent the streamsides and areas of standing and fallen dead wood. These are important habitats for certain groups, such as diptera, although detailed recording has yet to be carried out.”
122. Given the uncertainty about the nature of the ornithological interest and the invertebrate fauna, it is not the case that these are special features.

Site 42, Gallows Hill SSSI

123. The claimant’s complaint here is that whilst Natural England assessed plant species and one butterfly species, the Adonis blue, the citation refers to a range of butterfly species and various resident birds, noting that a comprehensive ornithological survey had not been undertaken. All these should have been assessed.
124. The “Description and Reasons for Notification” begins that the site encompasses botanically diverse chalk grassland and scrub containing animal and plant species of a nationally restricted distribution. There follow paragraphs on the grasses and scrub, with a final paragraph that these combined provide conditions favourable to a variety of animals, “[m]any typical chalk grassland butterflies...a thriving colony of the nationally restricted adonis blue [and] resident birds include yellowhammer, linnet, kestrel and buzzard, although a comprehensive ornithological survey has not yet been undertaken.”
125. Apart from the Adonis blue, which was part of the assessment, the language of the citation cannot be interpreted as the claimant contends to make other butterflies and the birdlife special features.

Site 45, River Avon System SSSI

126. The claimant’s case is that the SSSI citation identifies a range of bird interests, including birds in Annex 1 of the Birds Directive, and that the VAM refers to impacts on ground nesting birds. Natural England on his case should have assessed these features.
127. The citation is headed “Description and Reasons for Notification”. There then follow sub-headings. The first is “Key Features” and it begins that the River Avon and its

tributaries are of national and international importance for their wildlife communities. The next sentence reads: “Avon is richer and more varied than in most chalk streams with over 180 species of aquatic plant having been recorded, one of the most diverse fish faunas in Britain and a wide range of aquatic invertebrates.”

128. Following the “Key Features” section, there are other sub-headings on flora, invertebrates, birds, fish and mammals. As regards birds the citation states how the river system and the adjacent vegetation provide a variety of habitats for breeding, wintering and migrating birds. It notes that several pairs of the rare Cetti’s warbler *Cettia cetti* are associated with the riverine habitats.
129. To my mind the special features of this SSSI are contained in the “Key Features” section. That refers in a general way to the wildlife communities associated with the river, but the second sentence focuses on aquatic plants, the fish fauna and the aquatic invertebrates, not on the bird life. While that is clearly an important feature of the SSSI, as a matter of legal interpretation it is not a special feature, not even when the descriptive passage mentions a rare species. As with other VAMs, the one here about the need to ensure grazing management avoids trampling of ground-nesting birds cannot elevate bird species into special interests – it is general advice about the maintenance of the site.

CONCLUSION

130. The claimant has had some limited success in this claim. The order should reflect that. However, I am not persuaded of the need for declaratory relief: Natural England has indicated that it is ready to take any action required by the judgment.

Scott Schedule:

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding “no difference” principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
Area 1 - Gloucestershire								
1	Severn Ham	<i>“Resident lapwing, curlew, and redshank”</i>	No. The opening sentence of the citation [6/4/267] describes the site as <i>“one of the last traditionally managed ham meadows”</i> and goes on to describe the habitat as neutral grassland. As to the omissions alleged by the Claimant, the citation does not identify these as features of special interest: it merely says: <i>“Birds resident on the Ham include...”</i> .	Yes.	The notification comprises more than the summary list of Notified Features. It includes the citation and also includes the list of Operations Likely to Damage the special interest (OLDs). These are activities likely to damage the SSSI and that require special consent from NE in order to ensure the special interest is protected and maintained. In this case (and in many other examples	[Blank]	3	"The precise timing of the hay cut depends on local factors, including past management and current weather conditions, but should be after ground nesting birds have fledged their young."

¹ Taken from the sixth column of the table in Exhibit DW-16 [6/4/32-60].

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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					below), the OLDs extend to ecological interests which are beyond what NE regards as "special". For example, the OLDs include prohibitions on the killing or removal of species of fauna, which here includes specifically birds. Thus disturbance or other impacts on these birds are an Operation Likely to Damage the special interest.			

2	Coombe Hill Canal	<i>"Curlew and snipe"</i>	No. The citation [6/4/262] indicates that these features are less than special. The opening sentence of the citation is unequivocal: <i>"This site is of special interest for its</i>	Yes.	See the response in respect of Severn Ham, above.	[Blank]	3	"Where water voles are known to be present, the relevant good practice guidelines for ditch management and conservation should be followed". -
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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			<i>assemblages of nationally rare and scarce invertebrates and nationally scarce plants."</i> The features relied on by Mr Woodfield are found in the final paragraph, introduced as follows: <i>"The site is also locally important for its diverse breeding bird assemblage"</i> . There is a clear					"Maintaining structural diversity and a mosaic of age classes within areas of scrub is important for maintaining the diversity of species scrub is able to support. For example, hawthorn scrub supports the greatest variety of bird and insect species in early and middle stages of growth."

			distinction between the “ <i>special interest</i> ” features that are “ <i>nationally rare and scarce</i> ” and the bird assemblage which is merely “ <i>locally important</i> ”.					
Area 2 - Somerset								
3	Dunster Park & Heathlands	“‘ <i>Very diverse</i> ’ <i>breeding bird</i> ”	No. The ‘reasons for notification’ section [6/4/273] rules out	Yes.	See the response to Severn Ham above. So far as	[Blank]	3	"To avoid disturbance to breeding birds the

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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		<i>assemblage</i> ”	the breeding birds being regarded as of special interest in their own right. It says: “ <i>This site is notified for nationally important lowland dry heath, dry lowland acid grassland, woodpasture with veteran trees and ancient semi-natural</i>		NE rely on the use of superlatives elsewhere to distinguish between “special” and “less than special” interests (a distinction which is not accepted), the phrase here is a “very diverse breeding bird assemblage” which would appear to be			work (thinning or coppicing) is normally best done between the beginning of August and the end of February. Heathland supports the greatest diversity of plants and animals (including diverse invertebrate fauna and a number of

			oak woodland habitats. The fauna of the lowland heath includes a nationally rare butterfly the heath fritillary <i>Mellicta athalia</i> . The assemblage of beetles associated with the veteran trees is of national significance.” The citation is clear on this point and leaves no doubt as to the features of special interest. The		consistent with a feature of special interest by that measure. The citation refers to protected status of nightjar and Dartford warbler.			characteristic bird species) where management maintains the open nature of the heath, and promotes a varied structure of un-even aged stands of native heather and other characteristic plants. The maintenance of scattered mature Scots pine in undisturbed
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			assemblage of breeding birds referred to by the Claimant appears for the first time in the final paragraph of the citation. These bird species are not mentioned at all under the					locations will provide suitable nest sites for hobbies. Scattered gorse stands with a bushy structure rather than large continuous blocks are of greater benefit to

			"Reasons for Notification" heading.					the characteristic bird and invertebrate species associated with gorse scrub. For example, Dartford warbler require areas of open heath (with less than 25 trees per hectare) with over 50% cover of mature heather (preferably over 30 cm tall) and patches of dense, compact, mature gorse bushes (0.53 m tall) to be maintained."
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Area 11 - Cheshire								
4	Bagmere SSSI (Midland Meres & Mosses - Phase 1	“The overarching Ramsar designation is	No. The citation [6/4/63] does not contain any reference to bird	Yes.	Bagmere SSSI is included in the Ramsar Site because of its bird	[Blank]	2	The proportion of trees and scrub present across the basin fen should be

	Ramsar)	<i>cited for bird interests, albeit these are not mentioned in Bagmere SSSI citation and are mainly focused elsewhere (e.g. Rostherne)"</i>	interests. The Claimant's reliance on the Ramsar designation to try to introduce "bird interests" is premised on a misunderstanding. The SSSI is included in the Midland Meres and Mosses (Phase 1) Ramsar site, which is not designated for avian species.		interest. The site is therefore of international importance for these interests. Further the SSSI matrix identifies a 'low' risk from carnivore release which must relate to bird interests.			carefully evaluated and in most cases restricted to a few small scattered stands for the benefit of the birds and invertebrates. - Grazing usually takes place at times between late spring and early autumn, but the precise timing and intensity will depend on local conditions and requirements, such as the need to avoid trampling groundnesting birds.
Area 14 –								

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding “no difference” principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
Devon								
5	Nymet Barton Marsh	<i>“Marsh fritillary”</i>	No. The citation [6/4/93] indicates that this feature is	No. The mitigation measures included restricting vehicles to existing tracks	The species features in the citation and is of special	[Blank]	3	Traditional methods of management have produced a

			less than special. It says: <i>“The fauna of the site is poorly known, although the nationally scarce and declining marsh fritillary butterfly Euphydryas aurinea has been recorded.”</i>	and limiting the location of traps to existing sett footprint [5/2/179]. These are sufficient to protect this butterfly species.	interest. Compare White Horse Hill where "populations of nationally declining adonis blue" are a Notification Feature and also Black Hill Down where "populations of nationally declining marsh fritillary" are a notification feature.			species rich sward that supports a rich variety of flowering plants, invertebrates and birds.
6	Gilmoor and Moorlands	<i>“Woodlark and tree pipit and 28 butterfly species”</i>	No. The introductory paragraph of the citation [6/4/89] indicates that the scope of the special interest is botanical: <i>“This site comprises an area of unimproved herbrich acidic grassland of a restricted</i>	Yes.	The recognition that the species concerned "add value" indicates that they form part of the special interest. Marsh fritillary is a signpost species of the health of the cited habitats. A	[Blank]	3a	An element of managed scrub, both within and fringing a field, is of great importance to the characteristic birds and invertebrates of Culm Grassland. -

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			<i>community type, together with scrub</i>		site with an assemblage of 28			The rare Marsh Fritillary Butterfly

			<i>and woodland; it is of importance for its high botanical interest.”</i> This language is to be contrasted with the language used to describe the species identified by the Claimant. Tree pipit and woodlark are merely described as having “<i>recently bred in the grassland areas</i>”, which are also said to “<i>provide a hunting ground for barn owls</i>”. Similarly, with respect to butterflies, the citation refers to “<i>good populations</i>” of these “<i>uncommon and declining</i>” species. This is distinct from the terms “<i>it is of</i>		butterfly species (circa half the British species) could qualify for SSSI designation on that basis alone. That is unarguably 'special' and the OLDs for the site prohibit removal or killing of fauna.			is found on the majority of Culm Grassland sites and the management described above is also beneficial to ensure their continued existence on this site.
			Natural England		Claimant			

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8	Froward Point	<i>“Breeding birds”</i>	No. The opening paragraph of the citation [6/4/109] is clear on the scope of the special interest: <i>“This site is important for its coastal plant communities and in particular for the maritime heathland and grassland which support several local and rare species.”</i> The <i>“local and rare species”</i> are then covered in the paragraphs that follow. All are plant species.	Yes.	As with the sites above, these are cited features forming part of the special interest and reflected in the OLDs. NE do not answer the inconsistency point - i.e. why have breeding birds been assessed at Lemon Valley Woods SSSI despite lesser prominence in the citation.	[Blank]	3	Maritime grassland and heathland supports the greatest diversity of plants and animals (including a diverse invertebrate fauna and a number of characteristic bird species) - Free roaming livestock can suppress scrub encroachment and provide some light poaching to create small pockets of bare peat and sandy ground that are of benefit to a variety of specialised plants, invertebrates and reptiles.
9	Berry Head to Sharkham Point	<i>“Only guillemot colony at Berry”</i>	No. The citation [6/4/104] contains a	No. The entire site was excluded from	NE's response suggests an	[Blank]	2 & 3	It is important to retain the current

	(South Hams	<i>Head assessed</i>	very clear summary:	any licensed	approach that			extent and condition
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	SAC)	<i>(no other bird interests). No assessment of potential for impacts on bats at Berry Head (where they are a supporting feature to overarching SAC designation)."</i>	<i>“This site is important for its extensive area of limestone grassland containing many nationally rare plants and for its important assemblages of lichens. Also, the sea cliffs support the largest Guillemot colony to be found along the south coast of England. In addition, important geological features are to be found at Shoalstone Beach.”</i> This excludes the features cited by Mr Woodfield. Furthermore, the citation does not say whether bats are breeding or roosting (which would	activity by the mitigation measures identified for the bat and bird species that were assessed: see [2/3/377] , [5/2/180] and NE letter 5.10.18 §4.1(a) [Annex/4] .	disregards features felt worthy of mention in the original citation purely on grounds of absence of current detail about them. NE do not respond to the omitted bats point. Note also the SAC designation which applies to the site.			of the habitat whilst allowing natural coastal processes to operate along the length of the rocky coast. The cliffs should remain as steep slopes with many patches of bare rock. Natural erosion is vital to maintain this, and as such, cliffs should not be deliberately stabilised. If this occurs it will result in the bare ground and pioneer vegetation becoming progressively overgrown, creating a much less suitable nesting habitat. Similarly, other developments

			ordinarily be expected from a description of a feature of special					which may indirectly increase erosion rates and cause
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			interest): it merely says <i>“inhabited by”</i>. There is also a strong contrast between the ‘feeble’ description (<i>“regularly nesting”</i>) used for some of the seabirds mentioned and the robust description of the guillemot as the <i>“only stable breeding colony on the south coast”</i> (the guillemot <u>is</u> a feature of special interest which was assessed by Natural England).				habitat loss, including building at the cliff top, should be prevented. The importance of grasslands at the cliff top should not be overlooked, as these provide the starting point for the cliff plant communities. They should certainly not be converted to other habitat types, and should remain grazed to prevent scrub encroachment of the cliffs below. - Seabird colonies attract large numbers of visitors during the breeding season, and whilst this should not be discouraged, it is
			Natural England				Claimant

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
								important that access is managed appropriately so that the birds, and indeed the cliffs themselves, are not unduly disturbed. - An element of managed scrub, both within and fringing calcareous grassland can be of great importance to certain birds and invertebrates, but excessive scrub should be controlled. - The maintenance of scattered mature Scots pine in undisturbed locations will provide suitable nest sites for

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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								hobbies. - It is important to avoid disturbance to the bats while they are at the maternity roost. Entrances to the site should be secure to prevent uncontrolled or unauthorised access during the breeding season, but should remain unobstructed enough to continue to be accessible to bats. Activities of any kind within the site or close to the entrances should be largely avoided during this period each year to minimise the risk of disturbance to

								the breeding bats.
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
								Building or engineering works taking place within or around the area should be avoided, as should the use of vehicles or machinery that would be likely to produce noise, fumes or heat near roosting sites or access points that may disturb breeding bats. - Maintaining hedgerows, uncultivated field margins and extensively managed pasture near the roosting site will also provide appropriate commuting routes

								and foraging areas to support the bat population.
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
10	Torbryan Caves	“bats”	No. There is a clear contrast in the language used in the citation [6/4/114] regarding the geological features of special interest on the one hand (namely “a series of caves... that are of importance” and “Equally significant is the occurrence of the remains of... fossils”) and bats on the other hand (it states: “The caves are also used by several species of bat”). The wording does not suggest that bats were regarded as special when the site was notified.	Yes.	The bats are identified in the citation. The approach NE advocate is to assess for effects based on a fixed historical point without any recognition of changing or current interest features. The inconsistency with the assessment approach at Caen Valley is not answered or explained. Notwithstanding the omission of any mention of bats in the OLDs list, the VAM document	[Blank]	3	The caves support hibernating Greater Horseshoe, Lesser Horseshoe and Long-eared bats that require a range of environmental conditions within the hibernation site as different species have different temperature requirements, which vary through the winter. The internal conditions within the hibernation site should remain consistently cool and dark away from the entrances

			This is underlined by the notified list of operations, which makes no reference		sets out measures to protect the bat interests.			with stable ventilation. Emergence points and flight lines
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			to the operations which were (at the time of notification) obligatory for any bat SSSI notification, so the bats were clearly not regarded as special in themselves. There is no “inconsistency with... Caen Valley” as alleged by the Claimant. The citation for the Caen Valley Bats SSSI leaves no room for doubt that greater horseshoe bats (both breeding and hibernating) are of special interest at that site. Under the					should be maintained as unobstructed and free from artificial light, though vegetated cover around the entrance is desirable. - It is important to avoid disturbance to the bats while they are hibernating. Entrances to the site should be secure to prevent uncontrolled or unauthorised access during the winter months in particular, but

			heading “ <i>Reasons for Notification</i> ” it states: “ <i>The site is notified as a nationally important summer maternity roost and winter</i> ”					should remain unobstructed enough to continue to be accessible to bats. Activities of any
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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			<i>hibernacula for the greater horseshoe bat</i>". This contrasts markedly with the wording used to mention bats in the citation for Torbryan Caves SSSI.				kind within the site should be largely avoided during the general period of September – April each year to minimise the risk of disturbance to bats during the sensitive period of hibernation. Building or engineering works taking place within or around the area should be avoided, as should the use of vehicles or machinery that would be likely to produce noise, fumes or heat near roosting sites or access points that may disturb hibernating bats.* - The maintenance of some woodland
			Natural England				Claimant

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding “no difference” principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
								and scrub cover in the vicinity of the hibernation site will provide sheltered and secured access to commuting routes as well as valuable feeding habitat for the bats. This will be important in the spring following hibernation when emerging bats will need to build fat reserves prior to the breeding season. Maintaining hedgerows, uncultivated field margins and extensively managed pasture near the roosting site will also provide appropriate commuting routes and foraging areas

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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								to support the bat population.
Area 16 – Dorset								
11	Bere Stream	<i>“kingfisher and otter”</i>	No. The citation [6/4/117] says “A length of chalkstream with marshland and woodland. The Bere stream is a very typical permanent chalk-stream which has been maintained almost without management in recent years. The adjacent woodland and grassland have a rich flora and fauna.” The species identified by Mr Woodfield are referred to only in loose terms: “Kingfisher... occurs	Yes.	As above with sites above. OLDs include 'killing or removal of fauna', including birds and mammals.	[Blank]	3	The rivers natural structure and form should be maintained. This will ensure the provision of resting pools for fish, conserve the quality of the riverbed as fish spawning habitat, and avoid the creation of artificial barriers to the passage of migratory fish and other animals, such as otters. Bank-side vegetation should be allowed to develop, allowing characteristic plants to flourish as well as benefitting those

								animals that spent
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			<i>and Otter... is regularly recorded".</i>					part of their lifecycle out of the water. It may be beneficial to consider reinstating traditional swamp management practices where they are not in conflict with other nature conservation objectives, such as the specific requirements of certain birds or invertebrates. Grazing usually takes place at times between late spring and early autumn, but the precise timing and intensity will depend on local conditions and requirements, such as the need to avoid trampling groundnesting birds. An element of
			Natural England		Claimant			

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
								managed scrub, both within and fringing marshy grassland can be of importance to the birds and invertebrates, as can a surrounding hedge. To avoid disturbance to breeding birds the work (thinning or coppicing) is normally best done between the beginning of August and the end of February.
12	Black Hill Down (Cerne & Sydling Downs SAC)	"five other butterfly species"	[6/4/119] It is arguable that the brown argus and chalkhill blue species of butterfly are of special interest. However, given the mitigation measures, the issue is academic.	No. The mitigation measures for this SSSI included: <i>'Restrict vehicles to existing tracks. Limit location of traps to existing footprint or areas of scrub'</i> (which were	NE uncertainty over interpretation of citation to be noted. Suggests by reference to the exclusion of these species from the matrices that the default position when the	For this 'no difference' claim to have traction, those responsible for implementing the mitigation measures must be assumed to	1, 4	Mixed scrub provides an excellent source of food (nectar, fruit and berries) that supports a range of invertebrate and bird species. The greatest variety of invertebrates and birds are supported

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
				imposed to protect the grassland interest feature [5/2/194]). This is sufficient to protect the allegedly omitted butterfly species.	screening assessments were done in 2017 was 'if in doubt, exclude'.	have sufficient specialist entomological expertise to identify brown argus and chalkhill blue colonies as distinct from marsh fritillary colonies. Note that it is not clear which of the alternative mitigation measures was implemented. In any event a failure of assessment.		by the early and middle stages of scrub growth. - Patches of bare sandy ground, especially within heather vegetation and associated with banks or other topographic features, are important for reptiles. Streams and ponds considerably add to the heathland interest in providing habitat for specialised plants, amphibians and invertebrates such as dragonflies.

13	Black Hill Heath (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset	<i>"hobby"</i>	[6/4/120] Hobby was not separately assessed as a feature of special interest but given the mitigation	No. The mitigation measures already include <i>"Restrict shooting activities to outside the bird breeding season- i.e. no activities"</i>	NE uncertainty over interpretation of citation to be noted. Suggests by reference to the exclusion of this species from the	There is arguably some basis for the no difference argument in this specific case. However	1 & 4	Free roaming livestock can suppress scrub encroachment and provide some light poaching to create small pockets of
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
	Heaths SAC)		measures, the issue is academic.	<i>until 1st September..."</i> [5/2/181] . These were judged sufficient to protect nightjar and Dartford warbler in the Dorset Heathlands HRA process [2/3/415, 418] and in the SSSI matrix [5/2/181] . No additional measures would be required to protect hobby.	matrices was that the default position in 2017 was to exclude features of assessment even in cases of doubt.	it is not clear which mitigation measure was employed.		bare peat and sandy ground that are of benefit to a variety of specialised plants, invertebrates and reptiles.

14	Blackmore Vale Commons and Moors (Rooksmoor SAC)	"nightingale"	No. The "Reasons for notification" [6/4/121] do not include nightingale, i.e. it is clearly not a special feature. The language used in the "Reasons for notification" section is a good example of language that identifies features of	Yes.	The area is a county stronghold for the species concerned, supporting the view that they form part of the special interest. The OLDs include "Killing, injuring, taking or removal of any wild animal (including	[Blank]	3	Encouraging structural diversity and a mosaic of age classes within areas of scrub is important in maintaining the diversity of species. For example, blackthorn scrub supports the greatest variety of bird and insect
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			special interest. It states that the site is "of special interest by reason of the following nationally important features...". By contrast, when referring to nightingale in the third paragraph from the end of the "General description" section of the citation		dead animals or parts thereof), or their eggs and nests, including pest control and disturbing them in their places of shelter". None of the "Notified Features" relied upon by NE as constituting the special interest have nests. Compare with how			species in early and middle stages of growth. Cutting late, such as in February, will be least damaging to wildlife in general. However, where hedges are known to be of particular importance for brown hairstreak they should ideally be cut in late

			[6/4/124], the site is described as the “Dorset stronghold of the nightingale”. This local significance of the site is different from the express indication that the site is nationally significant for the features identified in the “Reasons for notification” section.		OLDs are used in NE's defence at Toryban Caves above. No response to the inconsistency point.			July/early August, before eggs have been laid (care will be needed to avoid any birds that have not yet fledged).
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”

15	Blue Pool and Norden Heaths (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC)	<i>"small red damselfly, bog bush-cricket and the butterfly silverstudded blue"</i>	[6/4/125] These were not individually assessed as features of special interest in the SSSI matrix but given the mitigation measures, the issue is academic.	No. The mitigation measures included: <i>"restrict vehicles to existing tracks... Digging in should be limited to the area of existing setts or large areas of scrub... Avoid placing traps alongside watercourses or within mires... Avoid digging in areas of habitat suitable for sand lizard egg laying (open sand) between May and October... Avoid digging in areas of habitat suitable for smooth snake hibernation between November and March "</i> [5/2/191-2] . These measures were to protect a range of heathland,	NE acceptance of omission noted.	Arguably, the no difference point has some traction here, although it is noted that the mitigation measures read as guidelines (e.g. "avoid") rather than complete prohibitions (such as "do not"). Risk may not be entirely avoided. In any event a failure of assessment.	1 & 4	"many of the specialised animals are dependent on both aquatic and adjacent terrestrial habitats and it is important that both are considered together" and "patches of bare sandy ground especially within heather vegetation... Are important for reptiles and many specialised heathland invertebrates"
			Natural England	Claimant				

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
				woodland and aquatic habitats, rare plant species, insects and herpetological features. They secure adequate protection for the species identified by the Claimant.				
16	Brenscombe Heath (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC)	"Dartford warbler"	The mitigation measures applicable to this site included "<i>Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September</i>" [2/3/412, 418]. The Habitats Regulations process for Dorset Heathlands SPA (which this SSSI is part of) judged that these measures were adequate to protect the Dartford warbler (which is one of the SPA species) [2/3/415, 418]. The matter was further addressed at Heydon 1 §§58 to 71, Heydon 2 §§37, 43 and 52, and Drewitt 1 §§13-19 and 25. The Court held that Natural England's approach was rational.		De facto acceptance of omission noted.	This does not answer the question in the first instance as to whether a separate SSSI assessment should have been carried out. Furthermore, the HRA restrictions cited (2/3/418) are "restrict shooting activities to outside the bird breeding	1, 2, & 4	Controlled winter burning "special care is required when some sensitive species are present"

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
						season - i./e. no activities til 1st Sept and avoid shooting between 1st Sep and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats". As set out in the HRA claim, these restrictions do nothing to protect wintering Dartford warblers using heathland habitats. The mitigation measures are therefore inadequate to address the		

					omission.		
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
17	Corfe Meadows	<i>“invertebrate fauna”</i>	No. The opening paragraph of the citation [6/4/130] summarises the interest as the habitat and its flora. The bulk of the citation expands upon these. The reference to invertebrate fauna is in the final paragraph [6/4/131]: <i>“The fauna is known to contain a rich assemblage of commoner invertebrates”</i> . These are found in the <i>“small block of wet woodland, in the hedgerows and along the banks of the Corfe River”</i>	No. The identified mitigation measures were: <i>“Exclude SSSI or restrict vehicles to existing tracks. Limit location of traps to existing sett footprint or areas of scrub”</i> [5/2/194]. These are sufficient to protect the alleged invertebrate interest.	See overarching comments above re special versus 'less than special'. OLDs which prohibit killing or removal of fauna contradict this defence that invertebrates on the site are 'not special' and therefore expendable.	[Blank]	3	"Any surrounding well managed hedgerows may considerably add to the habitat in providing shelter for invertebrates"

			(mentioned in the penultimate paragraph), which is itself not identified					
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			as part of the special interest. The description of the invertebrates as an assemblage of commoner species, with the most significant status being given to two local beetles, is not indicative of a special feature.					
18	Court Farm, Sydling (Cerne & Sydling Downs SAC)	Matrix includes "only marsh fritillary and not the other cited 'scarce and declining species of butterfly'"	These further butterfly species were not individually assessed but given the mitigation measures, the issue is academic.	No. The mitigation measures identified for this site included: "Restrict vehicles to existing tracks. Limit location of traps to existing sett footprint or areas of scrub" [5/2/195]. These are	NE acceptance of omission noted.	Small blue likely to use scrub and scrub interface so the 'no difference' point cannot stand as the mitigation measures do	1, 2, & 4	"In order to maintain a species-rich sward and its associated insects and other invertebrates"; "certain insects can benefit from the presence of taller vegetation"; "an

				sufficient to protect the butterfly species relied on by the Claimant.		not address potential impacts on this species. In any event, for a 'no difference' argument to		element of managed scrub, both within and fringing chalk grassland, can be of great importance to certain birds and
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
						work, those responsible for implementing the mitigation measures must be assumed to have sufficient specialist entomological expertise to identify small blue and chalkhill blue colonies as distinct from marsh fritillary colonies.		invertebrates"
19	Creech Grange	"unclear why only spring and	No. The citation [6/4/134] is clear in the first two	No. Mr Woodfield's statement particularises	Grey long-eared is one of Britain's	It has different habitat requirements	3a	Long section on "mixed assemblage

		<i>autumn use by greater horseshoe [bat] mentioned in matrix, not nursery (summer) use by other [bat] species including rare</i>	paragraphs that the special interest of the site is the maternity colony of greater horseshoe bats. The reference to other bats in the	<i>“nursery (summer) use” by additional bat species, but this is already covered by the existing mitigation measure, namely “Exclude SSSI from 1st May to</i>	rarest bat species (rarer than greater horseshoe) and nursery colonies are rarer still. The species is clearly part of the special interest.	to GH bats so would require different considerations, so a “no difference” argument cannot be run.		of bats” (i.e. Not just GHB) and reference to both maternity and winter roosts.
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
		<i>grey longeared”</i>	final paragraph does not indicate what most of those species are or in what way they use the site: it merely says “ <i>Seven other species of bats, including the local grey long-eared bat, are also known to use the roof spaces of the outhouses and the main buildings, in several cases as a nursery roost.</i> ” This is	<i>30th September” [5/2/190].</i> In any event, the debate is academic: the SSSI is only 0.1ha in size and essentially protects buildings (viz. the loft space above some stables/outhouses). Cull operators would never enter those buildings or fire shots next to				

			additional context and not part of the special interest.	them.				
20	East Coppice	<i>“scarce invertebrates including fritillary butterflies... nightingale”</i>	As to <i>“Nightingale”</i> , the citation [6/4/135] indicates that this is not a feature of special interest: it merely says that <i>“The birds of this site are typical of coppice woodland”</i>	No, as regards <i>“scarce invertebrates”</i> : the mitigation measures applicable to this SSSI included: <i>“... restrict vehicles to existing tracks.”</i>	The scarce breeding species is part of the special interest, particularly where it is a signpost to the quality of the notified habitats	Unclear which mitigation measure deployed.	1, 3 & 4	VAM refers to measures to avoid disturbance to breeding birds.

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			<i>and include Nightingale, a scarce breeding species in Dorset.”</i> This contrasts with the terms used to describe the woodland habitats of special interest including <i>“...a rare example of ancient woodland which has been continuously managed as coppice to the present day”</i>	<i>Limit location of traps to existing sett footprint”</i> [5/2/182]. Yes, as regards nightingale.				

			and “ <i>The ground flora of this wood...very rich, and include some rarities, reflecting this continuity of management.</i> ” Scarce invertebrates were not separately assessed but given the mitigation measures, the issue is academic.					
21	Hartland Moor	[“ <i>small red eyed</i> ”	The small red eyed	The mitigation				

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding “no difference” principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”

	(Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC)	<i>damselfly</i> ”] ²	damselfly (<i>Erythromma viridulum</i>) is not mentioned in the SSSI citation. The special interest of the SSSI includes an invertebrate assemblage. This assemblage encompasses the heathland dragonflies to which the citation refers and was assessed [5/2/192].	measures already include: “Restrict vehicles to existing tracks. Limit location of traps to existing sett footprint or large areas of scrub.... Avoid placing traps alongside watercourses or within fens and mires in units 3, 10 and 11... Avoid locating traps within areas of bog or mire... Avoid digging in areas of habitat suitable for sand lizard egg laying (open sand) between May and October and habitat suitable for hibernation between November				
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			Natural England	Claimant
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² Exhibit DW-16 states: “restricted list of cited species makes the matrix” [6/4/36]. Natural England’s response to the application noted that the Claimant had not provided any particulars of which species of special interest had allegedly been omitted. The Claimant’s table served on 12 October 2018 provides the following further particulars: “This includes e.g. small red eyed damselfly”.

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
				and March. Avoid digging in areas of habitat suitable for smooth snake hibernation between November and March” [5/2/192-3]. These are sufficient to address the “small red eyed damselfly”.				
22	Higher Houghton	“downland butterflies”	No. The opening paragraph of the citation [6/4/139] is all about grassland, scrub and woodland habitats, all of which are expanded upon in detail in subsequent paragraphs. The reference to down-land butterflies is found in the final paragraph. It merely says “typical downland butterflies including the local	No. The mitigation measures that applied to this SSSI included: “Exclude SSSI or restrict vehicles to existing tracks. Limit location of traps to within the sett footprint or areas of scrub... or conifer plantation” [5/2/182]. This is sufficient to avoid damage to “downland butterflies”.	See overarching comments. OLDs suggest interest not restricted to habitats alone: “the killing or removal of any wild animal - including invertebrates”	[Blank]	3	"In order to maintain a species-rich sward and its associated insects and other invertebrates"; "certain insects can benefit from the presence of taller vegetation"; "an element of managed scrub, both within and fringing chalk grassland, can be of great importance to certain birds and

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			<i>Chalkhill Blue</i> ”. This wording is in contrast to the stronger wording used for other features, e.g. “ <i>chalk grassland and scrub communities are particularly rich and well developed and provide excellent examples of types found in east-central Dorset.</i> ” The final paragraph is a brief summary of the characteristic fauna typically associated with such a diversity of special habitats, with the butterflies presented as examples of that.					invertebrates”. Invertebrates also mentioned in context of hedgerows and broad-leaved woodland.
23	Holton and Sandford Heaths (Dorset Heathlands SPA; Poole Harbour SPA;	<i>“Dartford warbler, nightjar, woodlark and also Cetti’s warbler”</i>	This site is part of Dorset Heathlands SPA and Poole Harbour SPA so the applicable mitigation measures included: “ <i>Restrict vehicles to existing tracks... Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st</i>		This does not answer the question in the first instance as to whether a separate SSSI assessment for these species should have been carried out. Furthermore, the HRA restrictions cited (2/3/418) are		1, 2, 3 & 4	Heathland birds frequently mentioned in VAM.

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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
	Dorset Heathlands Ramsar; Poole Harbour Ramsar; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC; Dorset Heaths SAC)		<i>September.... Avoid shooting between 1st September and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats...</i> [2/3/418, 465]. The Habitats Regulations process for Dorset Heathlands SPA (which this SSSI is part of) judged that these measures were adequate to protect Dartford warbler, nightjar, and woodlark (which are SPA species) [2/3/415, 418]. The matter was further addressed at Heydon 1 §§58 to 71, Heydon 2 §§37, 43 and 52, and Drewitt 1 §§13-19 and 25. The Court held that Natural England's approach was rational. No different considerations arise for Cetti's warbler (which is, in any event, not arguably a feature of special interest given that it is only referred to in the citation [6/4/143] under the term “associated scrub support several pairs...”).		"restrict shooting activities to outside the bird breeding season - i./e. no activities til 1st Sept and avoid shooting between 1st Sep and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats". These restrictions do nothing to protect wintering Dartford warblers or woodlark using heathland habitats.			
24	Lulworth Park and Lake	“breeding wetland birds or wildfowl especially pochard”	Yes [6/4/144].	A mitigation measures has already been imposed to address these interest features,	NE acceptance of omission noted.	Ex post facto assessment. The no difference point cannot be claimed as	1 & 4	NE acceptance of omission noted. VAM underlines that breeding wetland birds and wildfowl part of the special

				namely: “No		it would have been		interest but only via
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
				<i>shooting activities or access to within 200m of the lakes all year round</i> (notified to the Claimant on 19 September 2018 [Annex/1]).		unnecessary to impose retrospective restriction. In any event, this restriction will have been imposed too late to come into effect, and there has been a failure of assessment.		generic statements - i.e. No special treatment
25	Lyscombe and Highdon	<i>“typical chalk downland butterflies including local Chalkhill Blue”</i>	No. In the citation [6/4/145] there is a contrast between the stronger description of the flora (described as an “important example”) and the weaker description of the fauna (described as	The mitigation measures for this SSSI were to: “Restrict vehicles to existing tracks. Limit location of traps to existing sett footprint or areas of scrub” [5/2/188-9]. This is sufficient to	See overarching comments. OLDs suggest interest not restricted to habitats alone: “the killing or removal of any wild animal - including invertebrates”. A “rare” spider is mentioned in the citation, but NE	[Blank]	3	Invertebrates mentioned in context of not just grassland but also scrub and woodland habitats

			<i>“abundant and varied”</i>). The opening paragraph is about chalk	avoid damage to <i>“chalk downland butterflies”</i> .	pass no comment on that.			
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			downland habitats (with an emphasis on the flora), which are expanded upon in detail in subsequent paragraphs. The final paragraph is best interpreted as a brief summary of the characteristic fauna typically associated with such a diversity of chalk downland habitats, with the butterflies presented as examples of that.					

26	Morden Bog and Hyde Heath (Dorset Heathlands SPA; Poole Harbour Ramsar; Dorset Heathlands Ramsar; Dorset Heaths (Purbeck & Wareham) & Studland Dunes	<i>“breeding hobby or for shelduck or snipe”</i>	No. The third paragraph of the citation description [6/4/147-8] summarises the species interests of the site and refers specifically to <i>“international importance”</i> for birds. The final paragraph then	This site is part of Dorset Heathlands SPA, Dorset Heathlands Ramsar, and Poole Harbour Ramsar. Between the SSSI assessment and HRAs, the following mitigation measures were identified as	Notable that NE reliance on the description relating to nightjar, woodlark and Dartford warbler as being “present in nationally significant numbers” within this SSSI and contributing to the	[Blank]	1, 2, 3 & 4	Comments re leaving scattered trees (although hobby not specifically mentioned) and also mention of need to avoid trampling ground nesting birds in pasture and wet grassland (e.g.
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”

	SAC Dorset Heaths SAC)		describes three species (nightjar, woodlark and Dartford warbler) as being “ <i>present in nationally significant numbers</i> ” within this SSSI and contributing to the internationally important populations of the wider Dorset Heathlands. There is therefore a clear thread running from the introductory paragraphs summarising the special interest, to these three species described in the final paragraph.	applicable to this SSSI: “ <i>Restrict vehicles to existing tracks... Restrict shooting activities to outside the bird breeding season- i.e. no activities until 1st September.... Avoid shooting between 1st September and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats....</i> ” [5/2/189] [2/3/408, 418, 465]. These measures were judged sufficient to protect a range of habitats and bird species, namely breeding populations of Dartford Warbler, Nightjar, Woodlark, Common Tern, and	internationally important populations of the wider Dorset Heathlands. That is exactly the position that applies at (e.g.) Holton Heath. This is because to be incorporated within the SPA all component SSSI would have to have achieved nationally important numbers in isolation. NE appear to have overlooked that issue here. NE also say "There is therefore a clear thread running from the introductory paragraphs summarising the special interest, to these three species described			Snipe)
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			Natural England	Claimant
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No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			the basis that the site “ <i>supports</i> ” or that it “ <i>forms part of a breeding territory</i> ” of these birds). These species are therefore best interpreted as providing additional context and not being of special interest in their own right.	Mediterranean Gull and non-breeding Hen Harrier, Merlin, Avocet, Black-tailed godwit, and Shelduck. They would plainly have been considered adequate to also protect hobby and snipe.	in the final paragraph”. That suggests they place weight on a sequence of importance as one reads through the citation. But that is not consistently followed or applied in their assessments. See the comments made in the original DW16 and replicated in this table about (e.g.) Lemon Valley Woods. No consistency. Is it the NE position that they have erred when they HAVE assessed species mentioned in the final paras of a citation?			

27	Oakers Wood	<i>“Wood Warbler, White Admiral,</i>	No. The opening paragraph of the	No, in respect of butterflies. The	See above responses on	[Blank]	3a	"Open spaces [in woodland], either
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
		<i>Silver Washed Fritillary, Pearl Bordered Fritillary or Small Pearl Bordered Fritillary”</i>	citation [6/4/151] indicates that it is the flora (not the fauna) which are the features of special interest of this site: “...the flora of Oakers Wood has many elements typical of ancient woodland including some uncommon species. It also has a rich fauna.” The uncommon species of flora are then highlighted in the later paragraphs as a lichen assemblage (including rare species) and a rare vascular plant. These are described as being “especially important” and “of	mitigation measures included: “Exclude SSSI or restrict vehicles to existing tracks. Limit location of traps to existing sett footprint or areas of rhododendron” [5/2/182] . This is sufficient to avoid damage to these butterfly populations. Yes, in respect of wood warbler.	distinctions between special/not special and how these compare with the OLDs etc. The listed butterfly assemblage would probably qualify the site for SSSI status on that alone in 2018. NE's position seems to be that if it has lost past interest but gained new 'special' interest, that would be immaterial. Additionally, the OLDs for this site include killing or removing any wild animal, including invertebrates,			temporary gaps created by felling or coppicing or more permanent areas such as rides and glades, benefit other groups of invertebrates such as butterflies”; and "where there is open space interest (e.g. Rich butterfly populations) adjacent plots may be worked to encourage the spread of species that are only weakly mobile." Also "to avoid disturbance to breeding birds the work is normally best done between the beginning of

			<i>particular interest</i> ". Conversely, the fauna (four butterflies and wood warbler), mentioned		including for pest control purposes.			August and the end of February"
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			in the final paragraph, are not described in terms suggesting particular importance or interest, just that they are strong populations or otherwise uncommon in Dorset. As such, these are examples of the " <i>rich fauna</i> " indicative of the value of the woodland habitat, rather than of special interest in their own right.					
28	Piddles Wood	<i>"breeding Nightingale... Wood White</i>	No. The great majority of the	No, in respect of Wood White	The implication of the last sentence is	[Blank]	3a	"Open spaces [in woodland], either

		butterfly”	citation [6/4/153] is given over to describing the floristic composition of the woodland habitats of special interest.	butterfly. Mitigation measures included: “Exclude SSSI or restrict vehicles to existing tracks. Limit location of traps to existing	that elements of 'added value' to a SSSI, including now rare and rapidly declining species such as wood white			temporary gaps created by felling or coppicing or more permanent areas such as rides and glades, benefit other rousps of
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			Nightingale is referred to only as “local in Dorset”. That is clearly not a description of national or special importance. Whilst the communities of animals and the insect fauna are described as being “rich”, they are also said to be “typical of oak woodland in Dorset”, “typical woodland butterflies” and “commoner woodland birds”. These all indicate species which are	sett footprint or areas of rhododendron” [5/2/182]. This is sufficient to avoid damage to this butterfly species. Yes, in respect of Nightingale.	butterfly, are expendable and not worthy of engagement with the statutory assessment duties unless they appear on the online derived 'notified features' summary list. The approach that treats SSSI interests as if a static entity and their condition measured against a fixed point in time that may be several decades ago. Thus, a rare			invertebrates such as butterflies”; and "where there is open space interest (e.g. Rich butterfly populations) adjacent oplots may be worked to encourage the spread of species that are only weakly mobile." Also "to avoid disturbance to breeding birds the work is normally best done between the beginning of August and the end of February"

			being presented as adding value to the woodland habitat but not of special interest in their own right.		butterfly listed in the citation and that has declined to a point of high conservation concern in the years since this SSSI was designated does			
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
					not in the eyes of NE merit protection.			
29	Poole Harbour (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Poole Harbour SPA; Poole Harbour Ramsar; Dorset Heaths SAC)	<i>“nesting birds such as bearded tit”</i>	The SSSI assessment already includes “Assemblages of breeding birds - Lowland open waters and their margins” and ‘Assemblage of breeding birds – sand dunes and saltmarshes’ [5/2/199]. These species have therefore already been assessed and appropriate mitigation measures proposed, namely “Exclude SSSI or restrict shooting activities to outside the bird breeding season (so no activities until the 1 st September)” [5/2/199].		Mitigation measures only suggest avoidance of breeding bird season and of winter shooting in reedbed habitats. Unclear what was adopted.		1, 2, & 4	Mitigation measures only suggest avoidance of breeding bird season and of winter shooting in reedbed habitats. Unclear what was adopted.

30	Povington & Grange Heaths (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC)	<i>"Hobby and Nightingale"</i>	The bird species of special interest at this site are the Dartford warbler (described in the citation [6/4/157] as <i>"an important site for the rare Dartford warbler"</i>) and nightingale (the citation explains that <i>"The thorn scrub holds one of the most important</i>	No. The mitigation measures identified for this SSSI included: <i>"restrict shooting activities to outside the bird breeding season (so no activities until the 1st September)"</i> [5/2/187] [2/3/418] and <i>"Vehicle movement restricted to</i>	Note that NE accept omission error	Provides no protection to wintering Dartford warblers using heathland in winter.	-	"An element of native selfestablished deciduous woodland fringing the heathland may add to the conservation interest by providing habitat edge environments favoured by some heathland birds and invertebrates... A
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"

			<i>breeding populations of Nightingale</i>”). Nightjar and hobby are not features of special interest: they are introduced by the phrase “<i>other restricted heathland birds include...</i>”. The SSSI matrix referred to Dartford warbler and nightjar [5/2/187] (the latter being an error, in that nightingale should have been included instead). The error makes no difference because appropriate measures were identified by the assessors for breeding birds.	<i>existing tracks</i>” [2/3/408]. These are sufficient to address the alleged omissions. As to the Claimant’s argument that these measures “<i>Provides no protection to wintering Dartford warblers using heathland in winter</i>”: (1) this does not relate to an alleged omission – Dartford Warblers were assessed in both the SSSI matrix [5/2/187] and as part of the Habitats Regulations process for Dorset Heathlands SPA (which this SSSI is part of) [2/3/415,			divers e woodland strucrue with some open space, some areas of dense understorey and an overstorey of more mature trees is important” also “an element of managed scrub both within and fringing wet and neutral grasslands can be of great importance to certain birds... rotational citting should maintain patches of scrub at different ages of growth ensuring areas of young and middle-stage growth are mantained” - Re controlled winter burning “special care is required when some
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			Natural England	Claimant
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No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
				418 ; (2) the Claimant is wrong to allege risk of harm to this population, for the reasons addressed at Heydon 1 §§58 to 71, Heydon 2 §§37, 43 and 52, and Drewitt 1 §§13-19 and 25; and (3) the Court has already held that Natural England’s approach was rational.				sensitive species are present”
31	Rempstone Heaths (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC; Dorset Heaths SAC)	<i>“Dartford Warbler and Nightjar”</i>	The mitigation measures applicable to this site included <i>“Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September” [2/3/415, 418]</i> and also <i>“Vehicle movement restricted to existing tracks” [2/3/408]</i> . The Habitats Regulations process for Dorset Heathlands SPA judged that the restriction on shooting was adequate to protect Dartford warbler and nightjar (which are SPA species) [2/3/415, 418]. The matter was further addressed at		Omission error not refuted.	Provides no protection to wintering Dartford warblers using heathland in winter.	1, 2, & 4	[mechanical disturbance] “the timing and scale of such disturbance will depend on local factors such as, for example, the needs of individual species of conservation concern”

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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			Heydon 1 §§58 to 71, Heydon 2 §§37, 43 and 52, and Drewitt 1 §§13-19 and 25. The Court held that Natural England’s approach was rational.					
32	River Frome (Dorset Heathlands Ramsar)	<i>“kingfisher, grey wagtail, reed bunting, reed warbler, sedge warbler, Cetti’s warbler etc. Over wintering birds include Redshank, snipe and lapwing, teal, wigeon, Bewick’s swan and black tailed godwit (although the last four listed are outside the boundary). Common sandpiper and green sandpiper are both regular users on the</i>	No. The citation [6/4/160] indicates that birds and mammals are not a feature of special interest in their own right, as opposed to habitats and invertebrates. For example, mammal species are described merely as “recorded on” the site [6/4/163] and the breeding bird assemblage is described as “characteristic” [6/4/160]. The species listed should be interpreted as examples characteristic of the river itself and the associated riparian	Yes.	Features referred to are special and form part of citation. OLDs prevent (e.g.) killing and removal.	[Blank]	3 (& poss. 2)	"It may be beneficial to consider reinstating traditional management practuces where they are not in conflict with other nature conservation objectives, such as the specific requirements of certain birds or invertebrates "; [hay meadow management] "should always be after ground-nesting birds have fledged their young" and "management should allow winter flooding to occur and some shallow spalsh

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
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		<i>river's margins. Also not assessed for impacts on the three native aquatic mammals cited: water shrew, otter and water vole</i>	habitats. Invertebrates are in a different category: the site is described as being of "high entomological interest" [6/4/163].					flooding into spring where breeding wetland birds are important"
33	Stokeford Heaths (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC)	<i>"tree pipit or stonechat, hobby or snipe"</i>	[6/4/166] These species were not separately assessed but given the mitigation measures, the issue is academic.	The mitigation measures applicable to this site included, <i>"Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September"</i> [2/3/418] and <i>"Restrict vehicles to existing tracks...."</i> [2/3/408]. These are sufficient to protect	Acceptance of 'possible' omission noted	Restrictions will not protect wintering populations of snipe or stonechat. Unclear which restrictions adopted.	1, 2, & 4	"An element of native, selfestablished deciduous woodland fringing the hrathland may add to the conservation interest by providing habitat edge environments favoured by some heathland birds and invertebrates"

				all populations during the breeding				
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
				season. The Claimant’s argument that wintering populations of snipe and stonechat are inadequately protected is, in substance, an attempt to re-run the argument about wintering bird populations that was addressed by Natural England in the previous judicial review (Heydon 1 §§58 to 71, Heydon 2 §§37 and 52, and Drewitt 1 §§13-19 and 25) and ultimately rejected by the Court.				

34	Studland and Godlingston Heaths (Dorset)	<i>"Breeding birds not considered are Nightjar, Stonechat and</i>	Nightjar and stonechat <u>were</u> assessed: the SSSI matrix included	The mitigation measures that applied to this SSSI in included,	No admission of omission.	Cited restrictions will not protect wintering	1, 2, 3, & 4	"the presence of extensive shallow water and wet marginal substrates
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
	Heathlands SPA; Poole Harbour SPA; Dorset Heathlands Ramsar; Poole Harbour Ramsar; Dorset Heaths (Purbeck & Wareham) & Studland Dunes SAC)	<i>Water Rail"</i>	<i>"Assemblages of breeding birds - Lowland heath" [5/2/196] and appropriate mitigation measures were identified. Also assessed were "Aggregations of non-breeding birds", namely "Gadwall... Goldeneye... Pochard... Scaup" [5/2/196]. The language used in the citation [6/4/171] does <u>not</u> indicate that water rail is a feature of special interest: "the</i>	<i>"Restrict vehicles to existing tracks... Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September.... Avoid shooting between 1st September and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats..." [2/3/465] [2/3/418] [2/3/408] [5/2/1967]. These would also be sufficient to protect water rail, if this were a special</i>		populations of stonechat. Unclear which restrictions adopted. Citation states "Outside of the breeding season, Little Sea is important for wildfowl". No restriction imposed to protect this interest feature. cf Lulworth Park and Lake.		will provide the feeding conditions required by a variety of wintering, passage and breeding birds such as dabbling ducks and waders" and also [recreational activities] "should be managed sympathetically to avoid conflict with the management of the lake for nature conservation"

			<i>many swamps and pools support several pairs of Water Rail".</i>	interest feature. The Claimants' contention that these conditions "will not protect wintering				
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"

				<i>populations of stonechat</i>” is an attempt to re-run the argument about wintering bird populations using heathland that was addressed by Natural England in the previous judicial review (Heydon 1 §§58 to 71, Heydon 2 §§37 and 52, and Drewitt 1 §§13-19 and 25) and ultimately rejected by the Court. As for overwintering “<i>wildfowl</i>”, officers assessed the nonbreeding wildfowl named in the SSSI citation as using Little Sea (the lake at this SSSI), namely “<i>Gadwall</i>”, “<i>Goldeneye</i>”, “<i>Pochard</i>”, and				
			Natural England	Claimant				

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				"Scaup". They reasonably judged that they would be adequately protected by the prohibition on shooting in intertidal, fen, reedbed and grazing marsh habitats [5/2/196].				
35	Turners Puddle Heath (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC)	"Hobby and Stonechat"	No. The citation [6/4/176] uses different terminology to describe different bird species. Neither Hobby nor stonechat are SPA features. There is no reference to hobby or stonechat holding nationally significant populations, which was the criterion used for selection. Stonechat is given no particular status in the citation in terms of how it uses	No. The mitigation measures applicable to this site included "Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September" and "Restrict vehicles to existing tracks" [5/2/186] [2/3/418] [2/3/408]. These would be sufficient to address these species, if they	See overarching comments as to whether such species can be disregarded as 'less than special'	[Blank]	3	"An element of native, self-established deciduous woodland fringing the heathland may add to the conservation interest by providing habitat edge environments favoured by some heathland birds and invertebrates" and [re burning] special care is required where some sensitive species

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			the site or at what level of importance. Hobby is described as feeding there with no suggestion of breeding.	were features of special interest.				are present"
36	Wareham Meadows (Poole Harbour SPA; Dorset Heaths SAC; Poole Harbour Ramsar)	"various nonbreeding birds"; "breeding birds... Cetti's Warbler, Water Rail and Bearded Tit"	[6/4/178] "Aggregations of non-breeding birds – Black-tailed Godwit" was assessed in the SSSI matrix [5/2/186] . Further "various non-breeding birds" and breeding birds were not treated as features of special interest in their own right for this SSSI. However, given the mitigation measures, the issue is academic.	No. The mitigation measures applicable to this SSSI included: "Restrict vehicles to existing tracks... Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September... Avoid shooting between 1st September and 30 April in areas of intertidal, fen, reedbed and grazing marsh habitats." [2/3/465] [5/2/186] . These are sufficient to protect	Acceptance that breeding birds are arguably part of special interest, even on NE analysis.	Even if it is accepted that omissions at the S28G duty stage (SSSI screening) were 'captured' by the HRA process, the reliance on voluntary adoption of a prohibition on shooting in the breeding season and on opportunity constraints imposed by farming calendars	1, 2, & 4	"From April onwards, the area of standing surface water should be reduced to increase the area available for nesting waders" and "birds using grazing marsh are directly vulnerable to disturbance, which can cause them to lose time spent feeding or drive them to areas with a poorer supply of food. Management should seek to minimise any harmful disturbance,

				breeding and non-		does not read as imposition		especially during
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
				breeding birds.		of protective provisions, more like protection provisions or other mitigating factors arising on an ancillary or serendipitous basis.		their breeding period and at times when bird populations are under stress, such as during severely cold conditions" also "late stage ditches may be important for reed dwelling species" and "an element of scrub, particularly on the borders of grazing marsh, can be of importance to bird and invertebrates species" (e.g. Cetti's)
37	White Horse Hill	<i>"Invertebrates... brown argus, chalkhill blue, small blue, dark green fritillary</i>	No. The citation [6/4/180] contrasts <i>"two nationally scarce species, Adonis blue... and</i>	The mitigation measures for this SSSI included: <i>"Restrict vehicles to existing tracks.</i>	See previous comments as to whether such species can be disregarded as	[Blank]	3	"Areas of managed scrub... Can be of great importance to certain birds and invertebrates"

		<i>and dingy skipper</i>	<i>Lulworth skipper</i> ” (which <u>are</u> features of special interest) with the other	<i>Limit location of traps to existing sett footprint or areas of scrub</i> ”	'less than special' having regard to OLDs etc			(e.g. Small blue)
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No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding “no difference” principle]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			species identified by Mr Woodfield, which are described as “a number of local downland species”.	[5/2/187]. This is sufficient to avoid damage to these species.				
38	Winfrith Heath (Dorset Heathlands SPA; Dorset Heathlands Ramsar; Dorset Heaths SAC)	<i>“Nightjar... Hobby and woodlark”</i>	Nightjar is referred to in the citation [6/4/183] as making a significant contribution to the internationally important population on the Dorset Heathlands SPA (hence the assessment of Nightjar in the Dorset Heathlands HRA template [2/3/415]). Hobby is not treated in the citation [6/4/183] as a	No. Mitigation measures applicable to this site included <i>“Restrict shooting activities to outside the bird breeding season-i.e. no activities until 1st September”</i> and <i>“Vehicle movements restricted to existing tracks”</i> [5/2/187] [2/3/418] [2/3/408] . These were judged to be sufficient to	Again, reliance on omissions at the S28G duty stage (SSSI screening) being 'captured' by the HRA process. In any event, woodlark is a Qualifying Interest Feature of the overarching SPA so impacts on it in this SSSI could impinge on the integrity of the European designation. It is difficult to argue that it is not a special interest feature in that context.		1, 2, 3, & 4	"An element of native, selfestablished deciduous woodland fringing the heathland may add to the conservation interest by providing habitat edge environments favoured by some heathland birds" (e.g. Hobby, woodland, nightjar)

39	The Quantocks (Exmoor & Quantock Oakwoods SAC)	<i>"Invertebrate interest" "Also ...the generic assemblage ('woodland') for breeding birds does not capture the fact that cited species (e.g. nightjar) will breed in nonwoodland habitats on that site, thus species-specific considerations and applicable mitigation are lost in a generic 'lumped'</i>	The citation [6/4/200] does not describe the invertebrates as special in their own right: the opening paragraph merely says <i>"Although the invertebrate interest of the area has not been examined in great detail, a number of nationally important species have already been recorded"</i> . Later it refers to <i>"Invertebrates of note"</i> [6/4/202] . The terms used are indicative of interest that gives context to the habitats but not	The mitigation measures that applied to this SSSI were: <i>"avoid woodland areas"</i> (i.e. no shooting, trapping and vehicle use in woodland areas) and, outside of woodland areas, <i>"restrict vehicles to existing tracks. Limit location of traps to existing sett footprint"</i> [5/2/202] . These are sufficient to avoid damage to invertebrate species.	Invertebrates are cited in OLDs document. No defence is offered in respect of the omission of potential impacts on nightjar.	[Blank]	3	"heathland... Supports a number of characteristic bird species" and "maintenance of scattered mature Scot's pine in undisturbed locations will provide suitable nest sites for hobbies" also "scattered stans with a bushy structure... Are of greater benefit to the characteristic bird and invertebrate species associated with gorse scrub". In woodland "both temporary and
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
		assessment... "	species of special interest in their own right. This is to be contrasted with the	In relation to birds within the assemblage that will also breed on				permanent open spaces benefit groups of invertebrates such

			way the special breeding bird interest is presented. the periphery of the woodland, Natural England has considered this issue and, on a precautionary basis, will extend the prohibition on shooting so that there is no shooting during the bird breeding season (i.e. no shooting before 1 September) at this site. [In practice, this is an academic debate, as no shooting would take place before September in any event because of the opportunity constraints imposed by				as butterflies"
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"

				farming calendars and other seasonal factors.]				
Area 19 - Wiltshire								
40	Bowerchalke Downs	<i>"Cited birds at Bowerchalke Downs... not assessed"</i>	No. The citation does not describe these birds as a feature of special interest in their own right: it says " <i>Birds typical of this habitat include...</i> " and also refers to certain birds visiting the site or hunting in the area [6/4/214].	Yes.	The citation for this SSSI is an example where the notified interest features list on the 'designated sites' webpages are not clearly and demonstrably distinguished from other species in the citation text. Hence adonis blue butterfly is listed, but dark green fritillary and dingy skipper etc are not. In parallel example citations for other SSSI (e.g. see East Coppice, Area 16 Dorset above), NE have accepted that it is arguable	[Blank]	3	"An element of managed scrub, both within and fringing calcareous grassland, can be of great importance to certain birds"
			Natural England		Claimant			

No.	SSSI	Alleged omission(s) ¹	Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
					whether such species are special interest features. Birds were only used in DW16 as a summary example. The OLDs cite birds amongst the species that it is not permissible to kill or take.			
41	Hang Wood	"Cited birds at... Hang Wood... not assessed"	No. The citation does not describe these birds as a feature of special interest. It says [6/4/221]: "Ornithological interest is not well documented but the wood is possibly one of the few Wiltshire breeding sites for both buzzard and wood warbler. Mammalian inhabitants include roe deer, fox and badger". That does	Yes.	The citation for this SSSI is an example where the notified interest features list on the 'designated sites' webpages are not clearly and demonstrably distinguished from other species in the citation text. Hence adonis blue butterfly is listed, but dark green fritillary and dingy skipper etc are not. In parallel example	[Blank]	3	"To avoid disturbance to breeding birds, the work is normally best done between the beginning of August and the end of february"

No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding “no difference” principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are “less than special”
			not imply the level of national importance or significance commensurate with special interest. The bulk of the citation focuses on the woodland habitats from a botanical perspective. The two paragraphs at the end that mention faunal species including birds should be understood as giving further context to the special habitats.		citations for other SSSI (e.g. see East Coppice, Area 16 Dorset above), NE have accepted that it is arguable whether such species are special interest features. Birds were only used in DW16 as a summary example. The OLDs cite birds amongst the species that it is not permissible to kill or take.			

42	Gallows Hill	"Cited birds at... Gallows Hill... not assessed"	No. The citation [6/4/219] does not describe these birds as a feature of special interest. The final sentence says: "Resident birds include yellowhammer, linnet, kestrel and	Yes.	The OLDs cite birds amongst the species that it is not permissible to kill or take.	[Blank]	3	"An element of managed scrub, both within and fringing calcareous grassland, can be of great importance to certain birds"
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			<i>buzzard, although a comprehensive ornithological survey has not yet been undertaken.</i> " The opening paragraph of the citation refers to habitats "containing animal and plant species of a nationally restricted distribution." The only such animal species mentioned in the remainder of the citation is the Adonis blue butterfly					

			(which is a feature of special interest). The other species, including the birds, should be interpreted as providing additional context to the special habitats.					
43	Martin and Tidpit Downs	<i>"the wrong assemblage"</i>	The breeding bird assemblage <u>was</u>	No. The mitigation measures identified	No explanation offered for charge	[Blank]	1, 3	"An element of managed scrub, both

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		<i>("lowland damp grassland") has been assessed and again in a generic form. This does not permit species-specific considerations as to the particular requirements and sensitivities of (e.g.) Montagu's harrier or quail."</i> ¹³	assessed [5/2/206]. This was not the "wrong assemblage" and quail is a component of the assemblage. As to Montagu's harrier, this is merely described [6/4/224] as having bred successfully in recent years, which falls short of confirmed regular use and is not	for this SSSI included: "restrict shooting activities to outside the bird breeding season" [5/2/206]. These are adequate to address all birds named in the SSSI citation (including Montagu's harrier and quail).	that wrong assemblage assessed and other criticisms. On the scarce species quail, the Guidelines for Selection of Biological SSSIs allow for designation of features of regional importance. In any event, any successful breeding of			within and fringing calcareous grassland, can be of great importance to certain birds"

			language indicative of a feature of special interest.		Montagu's harrier is likely to represent >1% of the national population which therefore makes it of national interest. There can be no doubt that these species represent			
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
					part of the regional and national importance of this SSSI.			
44	Cranborne Chase	"cited bird fauna"	[6/4/215] Natural England accepted in September 2018 that there was a reasonable argument that these were special interest features and that the debate was not academic (because	The Claimant was informed on 19 September 2018 that Natural England would impose a prohibition on shooting during the breeding season at this site [Annex/1].	The text "the site supports a diverse woodland bird fauna" appears in the first para of the citation under 'Description and Reasons for Notification' There can be no doubt	No difference argument relies on absence of shooting in breeding season due to "opportunity constraints imposed by	1, 4	"To avoid disturbance to breeding birds, the work is normally best done between the beginning of August and the end of february" - "An element of

3 DW-19 continues: "Ecologically illogical conclusions for a rare and highly sensitive raptor of 'moderate' risk of disturbance etc. Notably, a high risk of CRE is indicated that is not mitigated by conditions. Compare with approach to sensitive ground nesting bird fauna elsewhere where CRE is almost exclusively dismissed as no risk. Completely inconsistent approach".

			these features would affect the mitigation measures). On a precautionary basis it therefore agreed to introduce corresponding mitigation measures for this SSSI.	That is sufficient to address the bird fauna. [In practice, this is an academic debate, as no shooting would take place before September (i.e. after the breeding season) in any event because of the opportunity constraints imposed by	that it forms part of the special interest.	farming calendars". This is not a protective provision, but a restriction which might arise on an ancillary or serendipitous basis. Such "opportunity constraints" are judged to be insufficient		managed scrub, both within and fringing calcareous grassland, can be of great importance to certain birds"
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			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [on alleged interest features]	Comment [regarding "no difference" principle]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
				farming calendars and other seasonal factors.]		in other cases where conditions have been imposed.		
45	River Avon System	"Cited birds"	No. Under the 'Key features' section [6/4/225-6] there is a helpful summary statement: 'The Avon is richer and more varied than in	Yes.	The citation is an excellent example of the inconsistency in NE's approach. The claim that these should be	[Blank]	3	"need to avoid trampling ground nesting birds"

			<i>most chalk streams with over 180 species of aquatic plant having been recorded, one of the most diverse fish faunas in Britain and a wide range of aquatic invertebrates'.</i> There is no reference in that sentence to bird communities. The sections under '<i>Birds</i>' and '<i>Mammals</i>' appear to be descriptive of the		disregarded as part of the special interest is reliant on application of the word 'extremely'. It is simply incorrect that NE claim that "The bird species listed would themselves not be enough to qualify as a bird assemblage" and yet the citation mentions "several pairs of the rare			
No.	SSSI	Alleged omission(s) ¹	Natural England		Claimant			
			Feature(s) of special interest under section 28(4) (a)?	Impact on mitigation measures?	Comment [<i>on alleged interest features</i>]	Comment [<i>regarding "no difference" principle</i>]	Type	Example comments from VAM that refer to interest features NE claim are "less than special"
			site's fauna rather than specifying the special interest [6/4/227].		Cetti's warbler", a species which is unequivocally a Notified Feature for SSSI designation on other sites (e.g. Stodmarsh in Kent).			