Neutral Citation Number: [2026] EWHC 9 (Admin)

Case No: AC-2025-CDF-000010

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

In the Matter of an Application for Judicial Review

Caernarfon Justice Centre
Llanberis Road
Caernarfon, LL55 2DF

Date: 6 January 2026

Before:

HIS HONOUR JUDGE KEYSER KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

THE KING **on the application of** **(1) RHEINALLT WILLIAMS** **(2) JOHN OWEN**	**Claimants**
- and -	
NATURAL RESOURCES WALES	**Defendant**
-and-	
CONWY COUNTY BOROUGH COUNCIL	**Interested Party**

- -
- -

William Upton KC (instructed by **Agri Advisor Legal LLP**) for the **Claimants**
Gwion Lewis KC (instructed by **Broadfield Law UK LLP**) for the **Defendant**
There was no appearance on behalf of the **Interested Party**.

Hearing dates: 29 and 30 October 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 6 January 2026 by circulation to the parties or their representatives by email and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. The claimants challenge the decision ("the Decision") of the defendant, Natural Resources Wales, on 24 October 2024 that it would no longer exercise its power under section 165 of the Water Resources Act 1991 to carry out works and maintenance to the Tan Lan Embankment ("the Embankment") on the Afon Conwy. Natural Resources Wales is the flood risk management authority with powers to manage flood risks in Wales under the Water Resources Act 1991, and it was in that capacity that it made the Decision. The reason for the Decision was that the efficacy of the Embankment in respect of flood-protection no longer justified the use of public funds for its maintenance. Natural Resources Wales is also the internal drainage board, with powers under the Land Drainage Act 1991 to carry out drainage and flood risk management works in the area known as the Afon Conwy Internal Drainage District. The interested party, Conwy County Borough Council, is the local authority and the lead local flood authority for the area. It has taken no part in the proceedings. The first claimant is the tenant of, and farms, land adjoining the Embankment. The second claimant owns and farms land adjoining the Embankment.

2. The claimants challenge the Decision on four grounds:

    1) Natural Resources Wales unlawfully limited the Decision to its functions under the Water Resources Act 1991 and failed to make a decision under the Land Drainage Act 1991; further or alternatively, the Decision amounts to prejudging any decision as to the exercise of powers under the Land Drainage Act 1991.

    2) In making the Decision Natural Resources Wales failed to take into account relevant considerations and took into account irrelevant considerations.

    3) The Decision has placed an unfair and disproportionate burden for maintenance of the Embankment on adjacent landowners and constitutes "control or interference" with the landowners' property rights under Article 1 of the First Protocol of the European Convention on Human Rights, contrary to section 6 of the Human Rights Act 1998.

    4) Natural Resources Wales has given inadequate reasons for the Decision.

3. By order dated 23 April 2025, His Honour Judge Jarman KC, sitting as a judge of the High Court, gave permission on Grounds 1 and 2 but refused permission on Grounds 3 and 4. The claimants have renewed their application for permission to advance Grounds 3 and 4 and, in accordance with a suggestion made by Judge Jarman KC, have agreed that the renewed application be considered at the substantive hearing of Grounds 1 and 2. This is my judgment after the partially rolled-up hearing.

4. The witness evidence adduced by the parties comprises two witness statements by the first claimant, one witness statement by the second claimant, and one witness statement from Mr Ross Akers, who is employed by Natural Resources Wales as its Strategic Planning and Investment Manager for Flood Risk Management.

5. I am grateful to Mr William Upton KC and Mr Gwion Lewis KC, leading counsel respectively for the claimants and for Natural Resources Wales, for their very helpful written and oral submissions.

6. An initial intention to avoid littering this judgment with abbreviations and acronyms proved optimistic. Therefore I offer the following glossary.

NRW: Natural Resources Wales (the defendant)

FWMA 2010: the Flood and Water Management Act 2010

LDA 1991: the Land Drainage Act 1991, as amended

WRA 1991: the Water Resources Act 1991, as amended

IDD: Internal Drainage District (under LDA 1991)

IDB: Internal Drainage Board (under LDA 1991)

FCERM: Flood and Coastal Erosion Risk Management

FRM: Flood Risk Management

FRMA: Flood Risk Management Authority

RMA: Risk Management Authority

FRMP: (NRW's) Flood Risk Management Plan

LLFA: Lead Local Flood Authority

SOC: Strategic Outline Case

OBC: Outline Business Case

7. In the remainder of this judgment, I shall begin by setting out much of the most relevant statutory material, which is necessary for understanding the issues in the case. Then I shall summarise the relevant facts, with particular focus on the Decision. Finally, I shall discuss the specific grounds of challenge.

The Legal Framework

Flood and Water Management Act 2010

8. It is convenient to begin with FWMA 2010, both because of its strategic importance, in that it created statutory obligations for the governments of England and of Wales to produce national strategies for flood risk management, and because reference is made to it in the amended provisions of LDA 1991 and WRA 1991.

9. The definition of flood is contained in section 1 (I omit some exclusions not of present relevance):

> "(1) 'Flood' includes any case where land not normally covered by water becomes covered by water.
>
> (2) It does not matter for the purpose of subsection (1) whether a flood is caused by—
>
> (a) heavy rainfall,
>
> (b) a river overflowing or its banks being breached,
>
> (c) a dam overflowing or being breached,
>
> (d) tidal waters,
>
> (e) groundwater, or
>
> (e) anything else (including any combination of factors)."

10. Definitions of "risk" and "flood risk" are contained in section 2, which provides in part:

> "(1) 'Risk' means a risk in respect of an occurrence assessed and expressed (as for insurance and scientific purposes) as a combination of the probability of the occurrence with its potential consequences.
>
> (2) 'Flood risk' means a risk in respect of flood."

11. For present purposes, the most important provision is section 8, which applies to Wales.

> "8. *National flood and coastal erosion risk strategy: Wales*
>
> (1) The Welsh Ministers must develop, maintain and apply a strategy for flood and coastal erosion risk management in Wales (a 'national flood and coastal erosion risk management strategy').
>
> (2) The strategy must specify—
>
> (a) the Welsh risk management authorities,
>
> (b) the flood and coastal erosion risk management functions that may be exercised by those authorities in relation to Wales,
>
> (c) the objectives for managing flood and coastal erosion risk,
>
> (d) the measures proposed to achieve those objectives,
>
> (e) how and when the measures are to be implemented,
>
> (f) the costs and benefits of those measures, and how they are to be paid for,

> (g) the assessment of flood and coastal erosion risk for the purpose of the strategy,
>
> (h) how and when the strategy is to be reviewed,
>
> (i) the current and predicted impact of climate change on flood and coastal erosion risk management, and
>
> (j) how the strategy contributes towards the achievement of wider environmental objectives.
>
> …
>
> (5) The Welsh Ministers may issue guidance about the application of the strategy."

No guidance has been issued pursuant to section 8(5).

12. Section 12(1) provides in relevant part:

> "(1) In exercising its flood and coastal erosion risk management functions, a Welsh risk management authority must—
>
> (a) act in a manner which is consistent with the national strategy and guidance …"

13. The current national strategy for Wales pursuant to section 8 is *The National Strategy for Flood and Coastal Erosion Risk Management in Wales* ("the Welsh National Strategy"), which was published in October 2020. The chapter on Objectives and Measures contains the following passage.

> "*Risk and Likelihood*
>
> 72. When considering the risk associated with flooding and coastal erosion, the term 'risk' encompasses two aspects:
>
> • The likelihood of an event happening, and
>
> • The impact that will result if flooding or coastal erosion occurs
>
> 73. It is not possible to stop all flooding or coastal erosion; these are natural processes and in some locations it may be more sustainable to allow nature to take its course. However when people, communities and businesses are threatened we can manage the risk by reducing the likelihood of an event and its associated impacts and consequences.
>
> 74. Both the likelihood and impact of flooding and coastal erosion are anticipated to increase over time due to factors

such as climate change and a growing population putting pressure on Local Authorities for housing development."

14. The section in the Welsh National Strategy on Roles and Responsibilities identified 28 Welsh RMAs (see section 8(2)(a) of FWMA 2010): NRW, the 22 Local Authorities as LLFAs, the four water companies operating in Wales, and the Welsh Government as highway authority for trunk roads. The role of NRW was specified in paragraphs 121 to 126, of which the following may be noted.

> "121. NRW's role can be split into 3 distinct areas
>
> i. Strategic oversight and general supervision over all FCERM matters.
>
> ii. Activities they do on behalf of, or in collaboration with, RMAs.
>
> iii. Activities they deliver in the management of flooding from main rivers and the sea and in managing coastal erosion.
>
> 122. Activities under (iii) relates to the functions and powers NRW has to manage flood risk from main rivers and the sea. NRW can also manage risk from other watercourses which flow into main rivers and undertake certain activities on ordinary watercourses to reduce risk, such as altering water levels and existing works. …
>
> 123. Their strategic oversight and general supervision role (i) is about having a Wales-wide understanding of all sources of flooding, coastal erosion and the risks associated with them, on a consistent basis to provide advice to the Welsh Government as well as helping inform RMAs and the public.
>
> …
>
> 126. NRW carries out all Internal Drainage Board (IDB) functions in Wales and hence can also manage risks from ordinary watercourses, surface water and groundwater in those drainage districts."

15. The Welsh National Strategy discussed Risk Management by reference to five stated objectives. Objective C was: "Prioritising investment to the most at risk communities". The following passages are particularly relevant.

> "217. As communities have developed so has a significant network of flood risk management assets, coastal protection and drainage infrastructure to help reduce the risks faced. Although these arrangements have generally worked well in the past, and are still working

> in most parts of Wales, the effects of climate change mean that the pressure on our existing infrastructure will increase significantly.
>
> 218. It is not possible, nor is it sustainable, to protect all areas from flooding or coastal erosion. Flood alleviation schemes reduce, but do not completely remove the risk of flooding. No matter how big the defence, there is always a possibility it can be breached or over-topped, leading to ever-more catastrophic consequences. Therefore, there will always be a residual risk that drainage and defences alone cannot address and a reason why raising awareness with the public is important.
>
> 219. Interventions to reduce flood risk are prioritised according to risk using the Communities at Risk Register and evidence of flood events, alongside supporting information on properties and wider benefits.
>
> 220. The Welsh Government prioritises FCERM schemes which primarily reduce risk to homes. Businesses and public buildings can also benefit from flood alleviation schemes, in particular those schemes which reduce risk to a mix of development types such as homes and shops along a high street or local district centre. Schemes which only reduce risk to businesses remain eligible but should not be prioritised over schemes which reduce risk to homes.
>
> …
>
> 222. Traditionally, flood and coastal risk interventions have been focused on engineering measures such as walls, groynes, embankments, and drainage improvements. However, in some instances these interventions have led to adverse impacts or increased risks elsewhere; RMAs should use appropriate modelling to establish any negative impacts associated with such measures."

16. Paragraphs 298 to 332 of the Welsh National Strategy dealt with funding of FCERM, having particular reference to the priorities set out previously in the document.

Water Resources Act 1991

17. In WRA 1991 all references to "the appropriate agency" are, in respect of flood management work in Wales, to NRW: section 221(1). As regards the Decision, the critical provision is section 165, which is in Part VII of the Act.

> "165. *General powers to carry out works*

(1) The appropriate agency may—

(a) carry out flood risk management work within subsection (1D) (a) to (f) if Conditions 1 and 2 are satisfied;

(b) carry out flood risk management work within subsection (1D) (g) or (h) if Condition 1 is satisfied.

(1A) Condition 1 is that the appropriate agency considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.

(1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—

(a) the sea, or

(b) a main river.

(1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.

(1D) In this section 'flood risk management work' means anything done—

(a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;

(b) to operate existing works (such as sluicegates or pumps);

(c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;

(d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);

(e) for the purpose of maintaining or restoring natural processes;

(f) to monitor, investigate or survey a location or a natural process;

> (g) to reduce or increase the level of water in a place;
>
> (h) to alter or remove works.
>
> (2) The appropriate agency shall also have power to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
>
> …"

The maintenance of the Embankment falls within section 165 (1D) (a). Therefore NRW as "appropriate agency" (commonly referred to as Flood Risk Management Authority, or FRMA) had power under section 165 to maintain the Embankment if Condition 1 and Condition 2 were both satisfied. Condition 1 was that NRW considered the work desirable having regard to the Welsh National Strategy produced under section 8 of FWMA 2010 (section 7 relates to England). Condition 2 was that the purpose of the work was to manage a flood risk from a main river or from the sea. The Afon Conwy is a main river for the purposes of WRA 1991; see further below.

18. Part IV (sections 105 to 113) of WRA 1991 concerns flood defence. The interpretation provisions are in section 113.

> "113. *Interpretation of Part IV*
>
> (1) In this Part—
>
> > 'banks' means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land and water between the bank and low-watermark;
> >
> > 'drainage' includes—
> >
> > > (a) defence against water, including sea water;
> > >
> > > (b) irrigation other than spray irrigation;
> > >
> > > (c) warping; and
> > >
> > > (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;
> >
> > 'flood defence' means the drainage of land and the provision of flood warning systems;
> >
> > 'main river' (subject to section 137(4) below [which is not relevant for present purposes]) means a watercourse shown as such on the main river map for England or the main river map for Wales and includes any structure or

> appliance for controlling or regulating the flow of water into, in or out of the channel which—
>
> > (a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and
> >
> > (b) is not a structure or appliance vested in or controlled by an internal drainage board;
>
> 'watercourse' shall be construed as if for the words from 'except' onwards in the definition in section 221(1) below there were substituted the words 'except a public sewer'. [This means that it includes, among other things, all rivers, streams and sluices.]
>
> (2) If any question arises under this Part—
>
> > (a) whether any work is a drainage work in connection with a main river; or
> >
> > (b) whether any proposed work will, if constructed, be such a drainage work,
>
> the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.
>
> …"

19. Section 221, on the general interpretation of WRA 1991, provides that "'main river' means a main river within the meaning of Part IV of this Act". Thus the definition of "main river" in section 113 applies to section 165. Section 194 provides:

> "194. *The main river map for Wales*
>
> (1) The NRBW [National Resources Body for Wales: that is, NRW] must keep the main river map for Wales.
>
> (2) For the purposes of this Act the main river map for Wales is a record of areas in Wales which—
>
> > (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, …
>
> (3) The map is conclusive as to the extent to which a watercourse in Wales is to be treated as a main river or as part of a main river for the purposes of this Act.
>
> …

(5) The NRBW must keep the map in electronic form."

20. Three further provisions of WRA 1991 may be mentioned here, as they relate to provisions of and functions under LDA 1991.

> "107. *Main river functions under the Land Drainage Act 1991*
>
> (1) This section has effect for conferring functions in relation to main rivers on the appropriate agency which are functions of drainage boards in relation to other watercourses.
>
> (2) Notwithstanding subsection (3) of section 21 of the Land Drainage Act 1991 (power to secure compliance with drainage obligations), the powers of the appropriate agency in relation to a main river shall, by virtue of this section, include the powers which under that section are exercisable otherwise than in relation to a main river by the drainage board concerned; and the provisions of that section shall have effect accordingly.
>
> (3) The powers of the appropriate agency in relation to a main river shall, by virtue of this section, include the powers which under section 25 of the Land Drainage Act 1991 (powers for securing the maintenance of flow of watercourses) are exercisable in relation to an ordinary watercourse by the drainage board concerned; and the provisions of that section and section 27 of that Act shall have effect accordingly.
>
> …
>
> (5) In this section—
>
> (a) references to the exercise of a power in relation to a main river shall include a reference to its exercise in connection with a main river or in relation to the banks of such a river or any drainage works in connection with such a river; and
>
> (b) expressions used both in this section and in a provision applied by this section have the same meanings in this section as in that provision.
>
> (6) The functions of the appropriate agency by virtue of this section are in addition to the functions of the appropriate agency which by virtue of the provisions of the Land Drainage Act 1991 are exercisable by the appropriate agency concurrently with an internal drainage board."

> "139. *Contributions from internal drainage boards*
>
> (1) Subject to subsections (2) and (3) below, the appropriate agency shall by resolution require every internal drainage board

> to make towards the expenses of the appropriate agency such contribution as the appropriate agency may consider to be fair.
>
> ..."
>
> "141. *Precepts for recovery of contributions from internal drainage boards*
>
> (1) The appropriate agency may issue precepts to internal drainage boards requiring payment of any amount required to be contributed by those boards under section 139 above.
>
> (2) An internal drainage board shall pay, in accordance with any precept issued to them under this section, the amount thereby demanded.
>
> (3) It shall be the duty of the appropriate agency to prepare, in such form as the relevant Minister may direct, a statement of—
>
> (a) the purposes to which the amount demanded by any precept issued by the appropriate agency under this section is intended to be applied; and
>
> (b) the basis on which it is calculated;
>
> and an internal drainage board shall not be liable to pay the amount demanded by any such precept until they have received such a statement.
>
> …"

21. In England the appropriate agency for flood management work under WRA 1991 will usually be a different body from the internal drainage board (IDB) under LDA 1991. However, in Wales the IDB for each of the 13 internal drainage districts (IDDs) is NRW; therefore the appropriate agency and the IDB are always the same body.

Land Drainage Act 1991

22. Section 1 of LDA 1991 provides in part:

> "(1) For the purposes of the drainage of land, there shall continue to be—
>
> (a) districts, known as internal drainage districts, which shall be such areas … within Wales (within the meaning of section 158 of the Government of Wales Act 2006) as will derive benefit, or avoid danger, as a result of drainage operations; and
>
> (b) boards, known as internal drainage boards, each of which shall be the drainage board for an internal drainage district;

> and, subject to the following provisions of this Part, the internal drainage districts which were such districts immediately before the coming into force of this section, and the boards for those districts, shall continue as such districts and boards.
>
> (2) An internal drainage board shall—
>
> (a) exercise a general supervision over all matters relating to the drainage of land within their district; and
>
> (b) have such other powers and perform such other duties as are conferred or imposed on internal drainage boards by this Act."

23. Section 11 provides in material part:

> "(1) … [T]he Natural Resources Body for Wales [i.e. NRW] may enter into an agreement with any internal drainage board for the carrying out by the board, on such terms as to payment or otherwise as may be specified in the agreement, of any work in connection with a main river which … the Natural Resources Body for Wales is authorised to carry out.
>
> (2) Notwithstanding any restriction by reference to a main river of the powers conferred on the appropriate supervisory body by section 165 of the Water Resources Act 1991, the appropriate supervisory body may—
>
> (a) with the consent of an internal drainage board, carry out and maintain in that board's district any works which the board might carry out or maintain, on such terms as to payment or otherwise as may be agreed between the board and the appropriate supervisory body; or
>
> (b) agree to contribute to the expense of the carrying out or maintenance of any works by any internal drainage board."

24. The general drainage powers of an IDB are set out in section 14, which provides in relevant part:

> "(1) Subject to section 11 above and subsection (4) and section 17 below—
>
> (a) every drainage board acting within the internal drainage district for which they are the drainage board …
>
> shall have the powers specified in subsection (2) below.

> (2) The powers mentioned in subsection (1) above are the powers, otherwise than in connection with a main river or the banks of such a river—
>
> (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or drainage work;
>
> (b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
>
> (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land."

25. The general powers of an IDB with respect to flood risk management are set out in section 14A, which provides in relevant part:

> "(2) An authority listed in subsection (3) may carry out flood risk management work if—
>
> (a) Conditions 1 and 3 are satisfied, or
>
> (b) Conditions 1 and 4 are satisfied.
>
> (3) The authorities are—
>
> (a) an internal drainage board,
>
> (b) a district council, and
>
> (c) a lead local flood authority for an area for which there is no district council.
>
> (4) Condition 1 is that the authority considers the work desirable having regard to the local flood risk management strategy for its area under section 9 or 10 of the Flood and Water Management Act 2010.
>
> …
>
> (6) Condition 3 is that the purpose of the work is to manage a flood risk in the authority's area from an ordinary watercourse.
>
> …

> (8) Condition 4 is that the purpose of the work is to manage a flood risk in the authority's area from the sea and either—
>
> (a) the work is within subsection (9)(a), (b) or (f), or
>
> (b) the appropriate agency has consented to the work.
>
> (9) In this section 'flood risk management work' means anything done—
>
> (a) to maintain existing works (including buildings and structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
>
> (b) to operate existing works (such as sluicegates or pumps);
>
> (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
>
> (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
>
> (e) for the purpose of maintaining or restoring natural processes;
>
> (f) to monitor, investigate or survey a location or a natural process;
>
> (g) to reduce or increase the level of water in a place;
>
> (h) to alter or remove works."

26. Section 72 is the interpretation provision. It includes the following definitions:

> "'the appropriate agency' means … in relation to Wales, the Natural Resources Body for Wales;
>
> 'the appropriate supervisory body' means … in relation to internal drainage districts which are wholly or mainly in Wales, the Natural Resources Body for Wales;
>
> 'banks' means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land between the bank and low-watermark;

> …
>
> 'drainage body' means … the Natural Resources Body for Wales, an internal drainage board or any other body having power to make or maintain works for the drainage of land;
>
> …
>
> 'main river' has the same meaning as in the Water Resources Act 1991;
>
> …
>
> 'ordinary watercourse' means a watercourse that does not form part of a main river;
>
> …
>
> 'watercourse' includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages, through which water flows".

27. It is convenient to mention here *The "Medway" Letter,* which was published on 28 June 1933 by the Ministry of Agriculture and Fisheries in connection with the Scheme prepared by the River Medway Catchment Board under section 4(1)(b) of the Land Drainage Act 1930. Mr Upton referred to the following passages, which are said to be of relevance to the present case in the light of sections 139 and 141 of WRA 1991.

> "The Minister thinks it desirable that he should set out in some detail what are the principles upon which he considers that a Catchment Board should proceed in preparing a scheme under Section 4 (1) (b) and I am, therefore, to make the following observations:-
>
> 1. The areas which may be brought within the limits of drainage districts are those which will derive benefit or avoid danger as the result of drainage operations. There is no definition either in the Land Drainage Act 1930, or in the previous Acts which that Act repeals as to what constitutes benefit or avoidance of danger. The Minister agrees that the term 'benefit' is a wide one … In this connection, however, it is important to note that the Royal Commission go on to say that benefit is not confined to the discharge of water beyond the boundaries of a given area, but includes also some responsibility for its passage to the sea. This principle has been recognised in the Land Drainage Act 1930, which enables a catchment board to obtain a contribution towards its expenses from the whole of the catchment area by precepts on the county councils and the county borough councils within the area. In the

> opinion of the Minister, therefore, the view of the Royal Commission could not properly be prayed in aid of a proposal to include within an internal drainage district areas which cannot be said to be likely to obtain some benefit or avoidance of danger as the result of drainage operations either of the catchment board or of the internal drainage board.
>
> 2. The Minister can see no reason why land should not be brought within an internal drainage district even if the only benefit it can obtain is from the work of the catchment board on the 'main river,' and circumstances may well arise where an internal drainage board have no drainage work themselves to carry out and the whole of the drainage rates collected by them would be to meet a precept of the catchment board. The mere fact that a watercourse is marked as 'main river' does not in general appear to the Minister to be a valid reason why the lands adjoining that watercourse should make no contribution by way of drainage rates towards its upkeep, whereas if such watercourse were not 'main river'' the whole of its maintenance would fall on the internal drainage district, subject, of course, to the possibility of a contribution from the catchment board in the circumstances set out in Section 21 (3) of the Act."

The Factual Background

NRW's relevant functions

28. NRW has powers under WRA 1991, in particular section 165, to manage flood risks from main rivers and from the sea. Its flood-risk management activities are almost entirely funded by Grant in Aid funding provided by the Welsh Government, by way either of revenue-based funding (for routine annual maintenance) or capital funding (for project-based, non-routine work). That funding derives ultimately from general taxation.

29. In addition, since 2015 NRW has been the IDB for all 13 IDDs in Wales, including the Conwy IDD, under LDA 1991. In fact, NRW and its predecessors had been the IDB for Conwy IDD for many years previously. (Conwy IDD was created in 1922.) NRW's funding for its work as IDB is separate from the funding of its flood-risk management work; it comes from drainage rates collected from the occupiers of agricultural land and buildings within the IDD and from special levies issued to the local authorities within the IDD in respect of non-agricultural land. The funding collected for IDD works is ringfenced for IDD works within the relevant IDD.

30. Section 141 of WRA 1991 enables NRW as the appropriate agency for flood-risk management to issue precepts to (itself as) the IDB requiring payment by way of a contribution towards the costs of works, undertaken by NRW in its capacity as FRMA,

relating to a main river within, adjacent to or flowing from or into an IDD. Money received from a precept is additional to the funding received from the Welsh Government.

31. The effect of section 11 of LDA 1991 is that NRW as the FRMA has the power to agree with NRW as the IDB that it will carry out in its latter capacity work on a main river that it is empowered to carry out in its former capacity. There are currently no such agreements in place.

32. NRW has its own strategy document, entitled *National Resources Wales Flood Risk Management Plan* (the FRMP), which was published in November 2023. The FRMP covers flooding from rivers, reservoirs and the sea, but not flooding from surface water and smaller watercourses, which is the primary responsibility of local authorities as LLFAs. The stated "objective" of the FRMP is "to reduce the risk to people and communities from flooding from main rivers, reservoirs and the sea". Achievement of the objective is to be by reference to a number of specified "priorities". Priority 1 is: "Respond to the climate and nature emergencies by seeking innovative practices, promoting adaptation and preparing for future change." Priority 11 is: "Prioritise our work on a risk basis in alignment with Welsh Government's National FCERM Strategy and develop our evidence base to secure future investment in flood risk management." The section of the FRMP dealing with North West Wales identifies Tan Lan as a location at risk of flooding from the sea and identifies as an ongoing, short-term measure, with particular reference to Priority 1, a review to "Consider future management options and undertake coastal adaptation planning."

The Embankment

33. The Embankment is an earth embankment, 2 miles long, on the east bank of the Afon Conwy, situated 1¼ miles north of Llanrwst, near Maenan Abbey, in the Conwy Valley. The Afon Conwy flows northwards for 34 miles from its source to its discharge at Conwy Bay, and during spring tides the river is tidal as far as Tan Lan. The section of the Embankment at the north runs along the southern bank of the Afon Maenan. The Afon Conwy is a main river within the meaning of WRA 1991 and LDA 1991, as is the Afon Maenan between the Afon Conwy and the A470. In addition, several small watercourses that transect the Tan Lan Embankment area are shown as main rivers on the Main River Map.

34. The Embankment was constructed in the nineteenth century, probably to support agriculture in the area by providing a measure of protection from flooding of the Afon Conwy and the Afon Maenan. The Embankment itself does not vest in NRW but is owned by the landowners of the parcels of land on which it sits. The landowner of any part of the Embankment within his ownership can, in principle, carry out works of maintenance or repair to that part, subject to obtaining any necessary permissions, including in particular a flood risk activity permit. Mr Akers states that the land behind the Embankment comprises about 18% of the total area of the Conwy IDD. As the land is low-lying, it is at risk from both fluvial flooding and tidal inundation.

The Decision-Making Process

35. After substantial FRM works to repair the Embankment had been carried out in 2016-2017, NRW's local operations team that was responsible for the maintenance of the

Embankment questioned whether continued maintenance and repair of the Embankment was consistent with the National Strategy. In May 2018 NRW commenced a project called Tan Lan Embankment Viability Study to examine the options for the Embankment and for protecting the area against the risk of flooding. In April 2019 that project produced a Strategic Outline Case (SOC). The Executive Summary of the SOC recorded:

> "Flood modelling has assessed the embankment as having a low standard of protection of around 1 in 2 (50% Annual Exceedance probability (AEP)). Therefore, it would only take a low fluvial event or a high tide for the embankment to be overtopped. The key problem to be addressed is the poor condition of the flood defence and the significant risk posed to the properties, business and land that in places is below normal tidal levels, located behind the embankment.
>
> The embankment sustained considerable damage during Storm Gareth in March 2019, caused by overtopping which scoured the inside face of the embankment along the southern section. NRW's Integrated Engineering team has embarked on repair works with an estimated cost of £15k. The railway line was damaged at the same time, with approximately 10km of the line closed due to flood damage. The embankment was also breached during a storm in December 2015.
>
> …
>
> The Tan Lan Embankment Strategic Outline Case (SOC) report has determined that the existing Tan Lan Embankment is an unviable asset due to its condition requiring extensive repairs and its standard of protection requiring improvements to continue providing a very limited flood protection benefit.
>
> The SOC report has investigated NRW's duty of care and the implications of the embankment failing in both the short and long term, the SMP2 [Shoreline Management 2] policy of the area and the options for NRW to manage the flood risk, environment damage and opportunities going forward. Although improving the existing embankment has been determined to be unviable, a shortlist of options to manage the long term flood risk for the study area have been identified, to be considered further at OBC stage. These short listed options are as follows:
>
> 1. Walkaway
>
> 2. Local Defences
>
> 3. Managed Realignment - New Embankment
>
> 4. Managed Realignment - Local Defences".

36. The next phase of the Tan Lan Embankment Viability Study was the Outline Business Case (OBC), published in May 2024, which considered in more detail the various options identified in the SOC. The Executive Summary read in part:

> "Evidence has been developed to assess the long list options. In particular, the fluvial model has been updated to enable a comparison of the predicted impacts for different modelling scenarios. Stakeholder events have been held with the local community for them to contribute their knowledge, experiences and feedback and for the project team to share project updates and evidence developed. In addition, we have held a number of meetings with individual local stakeholders and local organisations. The engagement provided valuable feedback to assist with the development and refinement of the fluvial model. The feedback received also assisted with the development of the long list and assessment of the long list and short list.
>
> The evidence developed does not provide justification for NRW Flood Risk Management (FRM) investment in the Tan Lan Embankment. Therefore, this does not provide justification for NRW FRM to maintain the embankment or for NRW FRM to contribute to the future maintenance of the Tan Lan Embankment.
>
> The recommended option is that NRW FRM will not use its permissive powers to undertake any future work to the Tan Lan Embankment or the outfalls through this embankment. This is referred to as an NRW FRM withdrawal of maintenance to the Tan Lan Embankment and all outfalls through the embankment. This will enable the prioritisation of resources in agreement with the National Strategy for Flood and Coastal Erosion Risk Management in Wales."

37. The part of the OBC dealing with "Strategic Context" noted the following:

> "In line with the Strategy, Welsh Government Flood and Coastal Erosion Risk Management (FCERM) funding prioritises the protection of people and communities.
>
> To assist in the prioritisation for Welsh Government funding of flood risk projects in Wales a standard methodology is used to prioritise capital schemes by both NRW and local authorities. This considers a number of factors including the Communities at Risk Register (CaRR), recent history of flooding, the number of homes affected, opportunities for partnership funding and the delivery of wider project benefits.
>
> The prioritisation score for Tan Lan Embankment is 49 / 100, which is considered relatively low. Welsh Government's prioritisation scoring provides a high level indication of relative priorities and therefore is not intended to determine project

> viability or consider the detailed assessment included within this appraisal."

The text went on to locate the study in the context of the FRMP and the Welsh Government's National Strategy.

38. The part of the OBC on "Existing Arrangements" recorded that the current condition of the Embankment to the west of the railway line was "Very Poor"; that assessment was explained by reference to Table 8 in the OBC. There followed a section headed, "Internal Drainage District", which is material to Ground 1:

> "The agricultural land located behind the Tan Lan Embankment is part of the Afon Conwy Internal Drainage District (IDD). The IDD is administered by the Internal Drainage Board (IDB), which is an NRW function. ... NRW's role as IDB is separate and independent of its Flood Risk Management role.
>
> The definitive legal boundary of the Afon Conwy Internal Drainage District (IDD) is as shown on the NRW Geospatial Map Viewer. This shows that the main Tan Lan Embankment is located outside of the Afon Conwy IDD, as shown in the extract from the Geospatial viewer in Figure 4 below. The section of embankment on the left bank of the Afon Maenan from downstream of the caravan park to the Network Rail Embankment is located within the IDD.
>
> NRW FRM issues a demand for payment to the Internal Drainage Board (IDB) each year for a precept payment. This precept payment is a contribution to the maintenance of FRM assets in and around the IDD. The Afon Conwy IDD stretches from Betws-y-Coed to downstream of Tal-y-Cafn, as shown in the extract from the Geospatial viewer in Figure 5 below. In 2022/23 the precept payment was £16,104.
>
> For the Afon Conwy IDB in 2022/23 the total amount of receipts and income from direct rates on landowners and special levies on local authorities was £34,047. Any underspend is carried over to the next year. This is comprised of contributions from rates payers, the local authority and NRW. All agricultural land owners/occupiers within an IDD are charged drainage rates in accordance with the Land Drainage Act 1991. They cannot opt out, however the IDB can choose not to raise the charges.
>
> The 10 rates payers located behind the Tan Lan Embankment have had their rates waived by the IDB for 2020 and subsequent years until the conclusion of the FRM focused Tan Lan Embankment study. The combined value of the rates for these 10 rate payers is around £3,000 per year. Following the completion of this FRM study the IDB will separately consider the rates and maintenance activities for those rates payers located behind the Tan Lan Embankment.

> The works carried out within the IDD principally include grass cutting and ditch clearance."

(See also section 7 of the part of the OBC concerned with "Key Stakeholders and Working with Others".)

39. The part of the OBC on "Need/Opportunity" read in part:

> "Based on the updated fluvial hydraulic model for the current baseline situation, Tan Lan Embankment offers a standard of fluvial flood protection to the land behind of between 50% Annual Exceedance Probability (AEP) and 20% AEP. The chance of flooding each year is referred to as the Annual Exceedance Probability (AEP). Hence there is between a 1 in 2 chance and a 1 in 5 chance that the embankment will be overtopped from the Afon Conwy in any year. Therefore, as a flood defence the Tan Lan Embankment offers a low standard of protection. The standard of protection offered by the Tan Lan Embankment will reduce in the future due to the impacts of climate change.
>
> NRW does not own the Tan Lan Embankment or the outfalls through the embankment. NRW has permissive powers that enable it to carry out flood risk management works at its discretion. Whilst NRW has historically carried out repairs to the Tan Lan Embankment, NRW does not have a statutory duty to maintain this embankment.
>
> ...
>
> This project therefore aims to determine the flood risk management viability of the Tan Lan Embankment and whether an affordable, sustainable, long term flood risk management solution can be identified for the community."

40. The OBC summarised in Table 12 the various "Risks" that had been considered; these related to "stakeholders" (landowners and tenant farmers), risks arising from intervention, and "Risks related to the Internal Drainage District"; in respect of the last, it was noted that, "Some of the options may impact the functionality or the viability of the IDD."

41. The text after Table 15 in the OBC contained a detailed analysis of various options. Under the heading "Fluvial Model", the text read in part:

> "To enable us to compare different options the Afon Conwy fluvial hydraulic model was updated as part of this study. … The model has been independently reviewed and signed off on behalf of NRW.
>
> To inform the long list assessment we modelled four different scenarios:

- Scenario 1: Baseline (current arrangement)
- Scenario 2: Removal of the embankment
- Scenario 3: Lowered sections of the embankment
- Scenario 4: A breach in the embankment

Scenario 2 included the removal of the embankment on both the left and right bank of the Afon Maenan. …

Figure 6 and 7 below show the maximum flood extents for the 20% AEP and 1% AEP return events for Scenario 1 and Scenario 2. The evidence from the model suggests that during flood events the embankments in this area cause a constriction to flows (act as a throttle) causing increased flood extents upstream.

…

A comparison of Scenario 1 and Scenario 2 shows that:

- For the most frequent storm events the embankment provides some flood protection to homes that would otherwise flood more frequently.
- For relatively frequent and less frequent (more severe) storm events there are fewer homes predicted to be at flood risk in Scenario 2 (without the embankment).

As there are overall fewer homes predicted to be at flood risk in Scenario 2 in comparison to Scenario 1, this does not provide justification for NRW Flood Risk Management (FRM) investment in the Tan Lan Embankment. Therefore, NRW FRM has no justification to maintain the Tan Lan Embankment or to invest in or contribute to the future maintenance of the Tan Lan Embankment through a joint approach or collaborative organisation."

The "Economic Assessment" that followed was as follows:

"An economic assessment of flood damages has been undertaken to better understand the flood risk impact of the existing Tan Lan embankment. Two scenarios have been assessed, a Walkaway scenario where the Tan Lan embankment is not present for the duration of the appraisal period, and a Business as Usual scenario where the existing embankment is maintained for the appraisal period. The Economic Appraisal Technical Note is included in Appendix D.

Benefits, represented by damages avoided, are calculated by comparison of the damages observed during the Walkaway

> baseline option with damages for the Business as Usual option. Table 17 below [not reproduced in this judgment] shows the capped present value benefits for the modelled area. This assessment indicates that the Tan Lan Embankment may cause some disbenefit in terms of flood damages when considering the modelled area i.e. that overall the flood damages in the Business as Usual scenario exceed those in the Walkaway scenario."

42. The claimants do not seek to challenge, in these proceedings, the model adopted in the OBC.

43. Under the heading "Identified Short List" the OBC said:

> "Based on the assessment of the long list options, shown in Appendix B, and considering the justification and prioritisation for FRM investment in accordance with the aim of the National Strategy to reduce risk to people, the following two options were identified for the short list.
>
> - NRW Flood Risk Management Withdrawal of Maintenance
>
> - Intertidal Habitat Creation".

There followed a comparative analysis of these two options. One conclusion of the analysis was that the Intertidal Habitation Creation option had no clear delivery model, because necessary agreement with the landowners had not been reached, and was not achievable. The final recommendation was the Withdrawal of Maintenance option.

44. In his witness statement, Mr Akers states:

> "113. The OBC set out the matters considered in detail, and the longlisted options. However, its ultimate conclusion was that continuing with any maintenance or capital improvement of the Embankment, would not be consistent with the duty placed on us to act in line with the Strategy, because it would be uneconomic and not a priority in the risk-based framework in which we have to operate. It therefore recommended that there be a 'withdrawal of maintenance' and that the withdrawal of maintenance procedure be followed.
>
> 114. The OBC was considered by the FRM Business Group in summer 2024. The subsequent approval of the OBC, and then the planning and preparing of communications, took until 24 October 2024, when the decision was announced to the public and affected stakeholders."

The Decision

45. The Decision was set out in a letter dated 24 October 2024 ("the Decision Letter"), of which for present purposes the following was the important part:

> "Following careful deliberation, Natural Resources Wales (NRW) has decided that it will not exercise its permissive powers under section 165 of the Water Resources Act 1991 in relation to works and maintenance to the Tan Lan Embankment and outfalls through this embankment, as shown on the enclosed figure. This means that from 25th October 2024, NRW will not carry out maintenance to the Tan Lan Embankment or the outfalls through this embankment. This includes:
>
> - the embankment on the right bank of the Afon Conwy from the Network Rail embankment at the Tan Lan level crossing to the network Rail embankment at the Maenan Abbey level crossing
>
> - The embankment on the left bank of the Afon Maenan from downstream of the Maenan Abbey Caravan Park to the Maenan Abbey level crossing
>
> - All outfalls (culvert and flapped outfall structure) through these sections of embankment
>
> NRW's role as a Flood Risk Management Authority is to protect people and homes from flooding. At an operational level, NRW must prioritise its resources in areas and communities most at risk of flooding. Following an asset management assessment at this location, NRW has determined that the Tan Lan Embankment is not a cost-effective way of managing flood risk. Therefore, NRW does not consider that investing in, or continuing to maintain, the Tan Lan Embankment is the best use of its limited flood risk management resources.
>
> There will be a 6 month notice period before this decision is implemented to allow for any feedback to be considered. However, please be advised that if the assets detailed above were to suffer damage during the notice period NRW will not carry out maintenance or repairs to these assets.
>
> …
>
> An Outline Business Case has been produced, which sets out; the strategic context for this project; existing arrangements; the economic case and details of the long list and short list assessment; and the recommended option. The Outline Business Case is available to view on the project webpage (https://virtualengage.arup.com/tan-lan/)."

46. In that context, I turn to consider the grounds of challenge, which are set out in paragraphs 77ff of the Statement of Facts and Grounds. (References below to paragraphs are to paragraphs of the Statement of Facts and Grounds, unless otherwise stated.)

Ground 1

47. Ground 1 is that NRW has unlawfully limited its decision to WRA 1991 and has failed to take a decision as the IDB and/or has prejudged that decision with regard to its powers under LDA 1991.

48. This first formulation of the ground (before "and/or") is problematic. Although NRW is both the appropriate agency under WRA 1991 and the IDB under LDA 1991, the two roles are distinct and discrete and operate under different statutory regimes. In England the appropriate agency and the IDB will, at least usually, be different entities; there will be different decision-makers under the two statutes. It is hard to see why the fact that in Wales the same entity performs the two distinct roles should mean that it is required to make a decision under LDA 1991 when it makes a decision under WRA 1991, and Mr Upton did not explain why that should be so.

49. The second formulation (after "and/or") is equally unpromising. A decision under WRA 1991 is not a decision under LDA 1991; therefore it cannot "prejudge" any decision that remains to be made under the latter act. If what is meant is that the decision under WRA 1991 has effectively restricted the scope of available decisions for the IDB under LDA 1991, that cannot in itself properly be a valid complaint about the legality of the former decision. The scope of one's available decisions will often be restricted by the actions or decisions of another, but that provides no valid ground of complaint unless the actions or decisions of the other are unlawful. It is circular to say that those actions or decisions are unlawful because they restrict the scope of one's own available decisions.

50. At paragraph 85 Ground 1 is put on the basis that the Decision not to use the powers under section 165 of WRA 1991 in the future does not promote but frustrates the policy and objects of either WRA 1991 or LDA 1991. See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] A.C. 997. This way of putting the matter is also, in my judgment, untenable. It is as well, in the first place, not to lose sight of the fact that neither Act imposes on NRW an obligation to maintain the Embankment. As regards WRA 1991, NRW's general power to carry out flood risk management work would exist only if, as the appropriate agency, it considered the work desirable having regard to the Welsh National Strategy under section 8 of FWMA 2010: section 165(1A) of WRA 1991. Unless it could be said that the Decision was *Wednesbury* unreasonable, having regard to the Welsh National Strategy, or that it was made with disregard of relevant matters or in reliance on irrelevant matters (which is Ground 2), the *Padfield* argument has no basis. To argue that the manner of the exercise of powers under WRA 1991 is unlawful because it restricts the options available to the IDB under LDA 1991 seems to me to be a case of pulling oneself up by one's own bootstraps, as already indicated.

51. An additional, and in my view conclusive, answer to Ground 1 is set out in the Detailed Grounds of Defence and advanced by Mr Lewis. A decision by NRW about whether the Embankment should be maintained in the future could only be made by it as the appropriate agency under WRA 1991, not as IDB under LDA 1991. NRW has no power *as IDB* to carry out works to maintain the Embankment, because the Embankment is a bank of a main river (see sections 113(1) and 221 of WRA 1991) and

the powers of the IDB do not extend to its maintenance (see sections 14 and 14A of LDA 1991).

52. Whether an embankment is a bank of a main river falls to be decided in accordance with the facts of the particular case. In *Jones v Mersey River Board* [1958] 1 Q.B. 143, in considering the meaning of "banks" as defined in section 38(1) of the Land Drainage Act 1930 (a definition in identical terms to that in section 113 of WRA 1991), Jenkins LJ said at 151-2:

> "I should have thought that the question whether a given piece of land near to or adjoining, a river was part of the river bank must be a question very largely of fact to be decided in each particular case by reference to the size and habits of the river, the geological composition of the land, and the level of the land as compared with the river, and, no doubt, other circumstances of that kind. … the matter is, in the last resort, very largely a matter of fact."

He continued at 153-4:

> "So far as it is possible to decide a question of this sort save in the light of all the relevant facts in the particular case under consideration, I would adopt in substance the definition in the American case [*Howard v Ingersoll* (1851) 54 U.S. 381] and the view expressed to the same effect by Martin B. [in *Monmouthshire Railway and Canal Co. v Hill* (1859) 28 L.J.Ex. 283], and hold that the expression 'banks' in section 38 (1) means so much of the land adjoining or near to a river as performs or contributes to the performance of the function of containing the river. I think that that is as good a definition as it is possible to provide in vacuo; but I emphasize that its application in any particular case must depend to a great extent on the particular facts of the case - the character of the river, the character of its surroundings, and, no doubt, other considerations as well.
>
> I am fortified, in adopting the construction I have stated, by the circumstance that the expression 'banks' which we have to construe does appear, as I have already said, in the context of a land drainage Act. When a land drainage Act refers to the banks of a river, one supposes that the banks referred to are those banks which are material from the land drainage point of view, that is to say, the banks which contain the river. Once one comes to that conclusion, obviously the word 'banks' cannot be limited to the slope or vertical face where those banks actually meet the river, but must include, as I have said, the land adjoining or near to the river, to the extent to which it serves to contain the river."

(Parker LJ agreed with this "tentative definition", as did Pearce LJ.)

53. In the present case the Embankment, though not of course part of the natural slope where the land meets the river, is in close proximity to the natural banks of the Afon Conwy and the Afon Maenan and certainly contributes to the containment or confinement of the water in those rivers. The inference as to the purpose for which the Embankment was constructed (see paragraph 34 above) tends also to suggest that it was constructed "in connection with" the main rivers. The claimants have not contested either the function or the purpose of the Embankment; nor could they plausibly have done so, as it is their case that the maintenance of the Embankment is necessary for the very purpose of confining the water in the rivers. (I add that this conclusion does not require any further conclusion as to the extent to which the Embankment is within the Conwy IDD, and it is therefore unnecessary to discuss here the issue between the parties on that point.)

54. A distinct formulation of Ground 1 has emerged in the course of written and oral argument, namely that in making a decision under WRA 1991 NRW failed to have proper regard to the implications of any such decision on the IDB. This may conveniently be considered under Ground 2.

Ground 2

55. Ground 2 is that NRW erred in law in that it failed to take into account material considerations and took into account irrelevant considerations.

56. As set out in paragraphs 87 to 91 of the Statement of Facts and Grounds, the principal complaint is that in making the Decision NRW had regard only to matters concerning flood risk policy and failed to have regard to the potential impact of the Decision on the IDD or to the statutory framework applicable to itself as IDB under LDA 1991. This complaint is advanced as being an alternative to Ground 1: if NRW is right to say that it can make a decision under WRA 1991 without making a decision under LDA 1991, nevertheless (it is said) the significance of the former decision for the future of the IDD and IDB is a relevant consideration. It is also said that NRW failed to have regard to its ability to issue a precept against itself as IDB or to raise funds from grants, and that it approached the decision-making process with a closed mind, having already stopped maintenance works in 2020. By amendment, the claimants also say that NRW failed to consider the impact of the Decision "on the current and future generations of those who will rely on the existence of the IDD and their well-being (including with regard to Welsh culture and Welsh language)".

57. In my judgment, the complaints under Ground 2 have no merit.

58. In the first place, I agree with Mr Lewis that the principal way in which Ground 2 is advanced is in fact just a repackaging of Ground 1. It is really a case of trying to maintain that, if (as is the case) NRW did not actually have to make simultaneous decisions as FRMA and as IDB, when making a decision as FRMA it did have to decide what the consequences of that decision would be for its future decisions as IDB *and* treat the consequences as relevant considerations in limiting the proper scope of the decision to be made as FRMA. It seems to me that this is analytically and technically, but not substantively, different from Ground 1.

59. It is, anyway, not correct to complain that NRW had no regard to the position of the IDD and the IDB. The OBC expressly noted that the agricultural land behind the Embankment was part of the Conwy IDD and that the IDD was administered by NRW as IDB. The OBC recorded: "Some of the options may impact the functionality or the viability of the IDD." However, the Decision was a flood risk management decision under WRA 1991, not a decision under a different statutory scheme. I reject the submission that the FRMA when making a decision under WRA 1991 was obliged to have regard to the possible implications for a subsequent decision by a different statutory decision-maker (that is, the IDB rather than the FRMA) exercising different functions under a different statute.

60. It is also not right to complain that NRW failed to have regard to the potential to raise additional funds, whether by precept payments or by grants. The OBC expressly noted that NRW as the FRMA received precept payments from itself as IDB as a contribution to the maintenance of FRM assets in and around the IDD, and that all owners and occupiers of agricultural land within the IDD were charged drainage rates under LDA 1991, although the owners and occupiers of agricultural land behind the Embankment had received a waiver of their drainage rates since 2020 while NRW completed its FRM study. The OBC also adverted to the possibility of other sources of funds. However, its conclusion was that "NRW FRM has no justification to maintain the Tan Lan Embankment or to invest in or contribute to the future maintenance of the Tan Lan Embankment through a joint approach or collaborative organisation." This was an economic conclusion that was certainly open to NRW having regard to section 165 of WRA 1991, the Welsh National Strategy and its other FRM priorities.

61. The fact that NRW had not maintained the Embankment since 2020 does not demonstrate that it approached the decision-making process with a closed mind. It simply reflects the fact that, after the consistency of continued maintenance with the Welsh National Strategy had been identified as a question (see paragraph 35 above), NRW was undertaking a comprehensive review, in which one potential outcome was a decision to stop maintenance permanently.

62. The further way of putting Ground 2, as raised by the recent amendment, is in part just a reformulation of matters already raised. NRW *did* consider the potential impact of its Decision on those whose land within the IDD might be affected by it, and it also adverted to the fact that the Decision was likely to have consequences for subsequent decisions to be made by the IDB; but, as repeatedly stated above, it was not making a decision under LDA 1991 and was not required (or even permitted) to exercise its functions as FRMA for the purposes of the separate statutory scheme relating to its functions as IDB.

63. The complaint that NRW failed to have regard to the potential impact of the Decision on Welsh language and culture has (in my view) a ring of opportunism about it, because it is not really apparent why the Decision should have any such impact and Mr Upton did not provide any explanation of why it should. In any event, NRW did consider the matter. The OBC refers to an Equality Impact Assessment, which has been disclosed in response to the amendment of Ground 2 to include this particular complaint. Section 7 of the Equality Impact Assessment expressly considered possible impacts on the Welsh language and the requirement that there "should be no negative impacts on opportunities for people to use Welsh and the language should be treated no less favourably than the English language in our work." In the following table, the question,

"Do you think this proposal will have a positive or a negative impact on people due to their use of Welsh language?" is answered as follows:

> "No. Whilst the status and future of the Welsh language in Maenan and the local area has been raised as a potential issue by a stakeholder, there is no evidence to suggest that changes in flood risk at this level would have this type of cultural impact."

The next column of the table was headed, "Describe why it will have a positive/negative or negligible impact", and the response was as follows:

> "The mitigation of flood risk is not considered to impact access to, provision of, or opportunity for residents to speak Welsh and is therefore screened out of the assessment."

64. I should add that the Equality Impact Assessment was a comprehensive document that considered the full range of protected characteristics and the socio-economic implications of the Decision. Further, NRW also produced an NRW Health Impact Assessment, subtitled "Understanding Populations and Communities—Tan Lan Report", which contained a detailed overview of the social, economic and health profile of the area considered relevant to the Tan Lan Embankment study. This 33-page document analysed the population of the area by reference to (among other things) age, sex, religion, race, marital status, sexual orientation, socio-economic status, life expectancy, leisure opportunities, and Welsh language skills.

65. In conclusion, whether one agrees or disagrees with the Decision, it is in my judgment impossible to criticise NRW for failing to have regard to relevant matters. I reject Ground 2.

Ground 3

66. Ground 3 is that NRW has placed an unfair and disproportionate burden on the landowners to maintain the Embankment and its associated structures.

67. This ground is advanced in reliance on Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1"), which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The contention is that NRW's withdrawal of maintenance of the Embankment threatens increased flooding of the agricultural land behind the Embankment and therefore constitutes "control or interference" with the landowners' rights in that agricultural land, in circumstances where responsibility for maintaining the Embankment is being passed to the landowners, the Embankment and its associated structures are in a "poor" or even "very poor" condition (as set out in Tables 7 and 8 in the OBC), and no compensation is being given to the landowners for the withdrawal of maintenance. In the circumstances, the Decision has placed an unfair and disproportionate burden on the landowners and has not struck a fair and proportionate balance between the rights of the individual landowners and those of the public.

68. In refusing permission on this ground on the papers, Judge Jarman KC said:

> "As for ground 3, in relation to flood risk management, it is clear from the Defendant's Outline Business Case that a balancing of interests has been carried out and this ground is not arguable."

69. The claimants renew their application for permission on the basis that Judge Jarman KC was wrong to rely on the balancing of interests in the OBC as being sufficient, because the OBC was limited to a cost/benefit analysis of the interests covered by NRW's FRMA role only, and NRW did not address the question of whether an excessive and disproportionate burden was being imposed. Further, the OBC failed to take account of the land drainage interests or the possibility of grant funding; made no assessment of the increase in the landowners' burden in protecting their own land, despite evidence of a considerable increase in that burden since NRW stopped maintenance in 2020; considered only agricultural land values, not the value of the continuing loss of farming income; and ignored the benefits of continued maintenance to the transport infrastructure.

70. For the purposes of A1P1, "possessions" is construed broadly. In *Kovecký v Slovakia* 44912/98 [2004] ECHR 446, (2005) 41 EHRR 43, (a case concerning entitlement to inherit property that had been confiscated upon criminal conviction) the Grand Chamber of the European Court of Human Rights said at [35]:

> "(c) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his 'possessions' within the meaning of this provision. 'Possessions' can be either 'existing possessions' or assets, including claims, in respect of which the applicant can argue that he or she has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a 'possession' within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82 and 83, ECHR 2001-VIII and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII)."

The claimants' agricultural land clearly does fall within the meaning of "possessions".

71. However, I do not consider it arguable that the matters complained of against NRW violate the claimants' rights under A1P1.

72. In considering the operation of A1P1, the decision of the European Court of Human Rights in *Sporrong and Lönnroth v Sweden* [1982] ECHR 5, (1983) 5 EHRR 35, is instructive. The case concerned land that had been subjected to expropriation permits (putting it at risk of being compulsorily purchased during a fixed period) and prohibitions on construction. The Court said at [61]:

> "[A1P1] comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.
>
> The Court must determine, before considering whether the first rule was complied with, whether the last two are applicable."

In *Back v Finland* (2004) 40 EHRR 48 the Court said at [52]:

> "The three rules are not 'distinct' in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule. Each of the two forms of interference defined must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised."

73. In *Sporrong and Lönnroth v Sweden* the Court held that the facts of that case did not fall within the second rule (that is, the second sentence of the first paragraph of A1P1: deprivation of possessions). It said:

> "63. In the absence of a formal expropriation, that is to say a transfer of ownership, the Court considers that it must look behind the appearances and investigate the realities of the situation complained of … Since the Convention is intended to guarantee rights that are 'practical and effective'…, it has to be ascertained whether that situation amounted to a de facto expropriation, as was argued by the applicants.
>
> In the Court's opinion, all the effects complained of (see paragraph 58 above) stemmed from the reduction of the possibility of disposing of the properties concerned. Those

> effects were occasioned by limitations imposed on the right of property, which right had become precarious, and from the consequences of those limitations on the value of the premises. However, although the right in question lost some of its substance, it did not disappear. The effects of the measures involved are not such that they can be assimilated to a deprivation of possessions. The Court observes in this connection that the applicants could continue to utilise their possessions and that, although it became more difficult to sell properties in Stockholm affected by expropriation permits and prohibitions on construction, the possibility of selling subsisted; according to information supplied by the Government, several dozen sales were carried out (see paragraph 30 above).
>
> There was therefore no room for the application of the second sentence of the first paragraph in the present case."

The Court held that the prohibitions on construction "clearly amounted to a control of 'the use of [the applicants'] property', within the meaning of the second paragraph", though it did not have to decide whether the control was unlawful, but that the expropriation permits did not limit or control such use: see [64] –[65]. However, although the expropriation permits were not within the scope of the second or third rule, they were unlawful within the first rule.

> "68. … Even if the permits complained of were not contrary to [Swedish] law, their conformity therewith would not establish that they were compatible with the right guaranteed by Article 1 (P1-1).
>
> 69. The fact that the permits fell within the ambit neither of the second sentence of the first paragraph nor of the second paragraph does not mean that the interference with the said right violated the rule contained in the first sentence of the first paragraph.
>
> For the purposes of the latter provision, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights … The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 (P1-1). …
>
> The Court has not overlooked this concern on the part of the legislature. Moreover, it finds it natural that, in an area as complex and difficult as that of the development of large cities, the Contracting States should enjoy a wide margin of appreciation in order to implement their town-planning policy. Nevertheless, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to

> 'the peaceful enjoyment of [their] possessions', within the meaning of the first sentence of Article 1 (P1-1)."

On the particular facts, the effect of the expropriation permits, coupled with the prohibitions on construction, violated the right under the first rule in A1P1.

74. In the present case, neither the second rule (deprivation) nor the third rule (control) is engaged. The claimants are not deprived of their land. And NRW is neither purporting to exercise control over the claimants' land nor controlling the use to be made of it; it is if anything declining to exercise control.

75. The matter therefore comes down to the first rule (the right to peaceful enjoyment of one's possessions). This gives rise to two questions: first, whether there is any interference with peaceful enjoyment; second, if there is, whether a lawful balance has been maintained.

76. As regards the first question, it is right to note that, as was made clear in *Sporrong and Lönnroth v Sweden,* a case may fall within the first rule (interference) although it does not fall within either the second rule (deprivation) or the third rule (control). However, there are, in my view, two salient starting points. First, this case involves neither deprivation or control or anything that is genuinely analogous or tantamount to deprivation or control. Second, the claimants have no legal right to be protected from flooding and its effects, and at common law landowners are responsible for safeguarding their land and property when flooding occurs. In that context, it seems to me that the claimants' argument under A1P1 really amounts to a contention that an obligation to maintain flood defences (which it does not own) ought to be placed on NRW because it is disproportionate to require private landowners to bear the cost of maintenance when it could be borne by the public purse. In my judgment, that constitutes an unwarranted extension of A1P1. Under the guise of a complaint of interference with property rights, it seeks an expansion of property rights by giving these landowners rights that are not and never have been incidents of their ownership and which they did not have—and have not asserted that they have—any legitimate expectation of acquiring. What the claimants have are (i) proprietary rights in land, with the attendant risks and common law obligations, and (ii) an entitlement that decisions made by NRW that affect them will be made in accordance with the law. It is circular to set up the latter entitlement as the basis for a Convention right based on property rights. In short, I do not consider that Article 1 of the First Protocol is engaged at all.

77. This case is very different from *Kolyadenko v Russia* (2013) 56 E.H.R.R., where homeowners affected by flooding successfully claimed under Article 8 and A1P1. The state-owned reservoir would discharge into a river in times of very heavy rainfall. The administrator of the reservoir gave a warning to the civil authorities that the channel of the river was cluttered with debris and household waste and overgrown with small trees and bushes and that, in the event of anticipated heavy rain, it would be necessary to release water from the reservoir, and that in view of the poor state of the river channel this might cause severe flooding over a populated area unless appropriate measures were taken to clear the channel. Such measures were not taken, and flooding ensued. The Court said:

"213. The Court also reiterates that genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 to the Convention does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions … Allegations of a failure on the part of the State to take positive action in order to protect private property should be examined in the light of the general rule in the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention, which lays down the right to the peaceful enjoyment of possessions …

…

215. … In the present case, the Court has established in paragraphs 162-165 above that the flooding of 7 August 2001 occurred after the urgent large-scale evacuation of water from the Pionerskoye reservoir, the likelihood and potential consequences of which the authorities should have foreseen. The Court has furthermore established that the main reason for the flood, as confirmed by the expert reports, was the poor state of repair of the Pionerskaya river channel because of the authorities' manifest failure to take measures to keep it clear and in particular to make sure its throughput capacity was adequate in the event of the release of water from the Pionerskoye reservoir. The Court has concluded that this failure as well as the authorities' failure to apply town planning restrictions corresponding to the technical requirements of the exploitation of the reservoir put the lives of those living near it at risk (see paragraphs 168-180 and 185 above).

216. The Court has no doubt that the causal link established between the negligence attributable to the State and the endangering of the lives of those living in the vicinity of the Pionerskoye reservoir also applies to the damage caused to the applicants' homes and property by the flood. Similarly, the resulting infringement amounts not to 'interference' but to the breach of a positive obligation, since the State officials and authorities failed to do everything in their power to protect the applicants' rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1 (see *Öneryıldız*, cited above, § 135). Indeed, the positive obligation under Article 8 and Article 1 of Protocol No. 1 required the national authorities to take the same practical measures as those expected of them in the context of their positive obligation under Article 2 of the Convention (see, mutatis mutandis, *Öneryıldız*, cited above, § 136). Since it is clear that no such measures were taken, the Court concludes that the Russian authorities failed in their positive obligation to protect the applicants' homes and property."

The case, accordingly, concerned the effects of foreseeable flooding that resulted from the state's activities regarding the exploitation of the reservoir and "the authorities' negligence, which endangered lives" (*per* Sir Ross Cranston in *King v Environment Agency* [2018] EWHC 65 (QB), [2018] Env. L.R. 19, at [32]).

78. As regards the second question (lawful balance), the principles were stated as follows by the Grand Chamber in *Hutten-Czapska v Poland* (2006) 45 EHRR 4, at [167]:

> "Not only must an interference with the right of property pursue, on the facts as well as in principle, a legitimate aim in the general interest, but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the state, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a 'fair balance' that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.
>
> The concern to achieve this balance is reflected in the structure of article 1 of Protocol No 1 as a whole. In each case involving an alleged violation of that article the court must therefore ascertain whether by reason of the state's interference the person concerned had to bear a disproportionate and excessive burden."

79. The "fair balance" was considered, though *obiter*, in *King v Environment Agency,* which concerned a claim for damages for, among other things, unlawful infringement of the rights under A1P1. The claimants, who owned or farmed farmland near the River Severn, alleged that the Environment Agency had adopted a strategy or policy with respect to flood defence embankments around and near their land—in particular, by refusing to allow the embankments to be raised—that increased flood protection to Gloucester at their expense, and that in doing so the Environment Agency had not assessed the burden thereby imposed on the claimants. The claimants accepted that they had no legal right to be protected from flooding and its effects, and that at common law landowners were responsible for safeguarding their land and property when flooding occurred: see [21]. The issues were (1) whether the Environment Agency had interfered with the claimants' land by the adoption of a strategy whereby that land was used as a flood protection for Gloucester and (2), if so, whether in adopting that strategy the Environment Agency had struck a fair balance between the general interest of the community and the requirements of the protection of the claimants' rights: see [31]. The first issue was decided against the claimants. Regarding the second issue, Sir Ross Cranston said:

> "34. The issue of striking a fair balance between the general interest of the community and the requirements of the protection of the individual's A1P1 rights has arisen in a number of cases. A number of principles emerge. First, a fair balance requires 'a reasonable relationship of proportionality between the means employed and the aim sought to be realised': *James v UK* (1986) 8 E.H.R.R. 123, at [50]. Secondly, at the domestic level the margin of appreciation which the Strasbourg court exercises

becomes a recognition that, in certain circumstances, public authorities other than the courts are better placed to determine how the interests should be balanced: *AXA General Insurance Ltd*, at [131]. Thirdly, there may need to be the possibility of re-assessing the balance of the respective interests at reasonable intervals: *Sporrong* , at [70]; *Papastavrou v Greece* (2005) 40 E.H.R.R. 14 (but both were deprivation cases where no compensation had been paid). Fourthly, the necessary balance will not be found if the property owner has had to bear 'an individual and excessive burden': *Sporrong*, at [73]. Finally, control of property under r.3 of A1P1 can occur without payment of compensation, unless compensation is necessary to avoid an individual and excessive burden: *Sporrong*, at [73]; *R. (Alconbury Developments Limited) v Secretary of State for the Environment, Transport and the Regions* at [2001] UKHL 23; at [2003] 2 A.C. 295, at [72]; R. *(Trailer & Marina (Leven) Ltd) v Secretary of State for the Environment, Food and Rural Affairs* at [2004] EWCA Civ 1580; at [2005] 1 W.L.R. 1267, at [57]–[58], at [60]–[61], per Neuberger LJ.

…

155. But assuming that the policy of the Environment Agency has meant its interference with or even control over the claimants' land, it is evident that there has been a fair balancing of their rights with those of the general interest as required by A1P1 if these are to occur lawfully. A steady stream of consultants' reports and agency strategies, examined at length above, set out the public interest, while recognising the costs which some members of the community will bear from flooding events which cannot be mitigated. In particular, there have been the specific studies of the costs and benefits of the various options for managing flood risk at Minsterworth Ham, including various scenarios for carrying out further works on the claimants' land. One scenario considered has been to retreat the line, but until now that has been rejected in favour of maintaining the present embankment. All this is against the background of the limited amount of public funds being available to manage flood risk.

156. Where a delicate balancing of interests is required, where Parliament has charged the Environment Agency with supervising flood risk management in England, and where the agency has considerable expertise, the court is in no position to second guess its expert judgment and cost/benefit analyses. The need for judicial deference in this type of case runs through the speeches of the Law Lords in *Marcic v Thames Water Utilities Ltd* at [2003] UKHL 66; at [2004] 2 A.C. 42. Indeed, at [45] of Lord Nicholls' speech, on which the claimants placed so much reliance, with its reference to the minority who suffer damage

> and disturbance, and who are required to bear an unreasonable burden, concludes that it was a matter for the officials to reconsider the matter in light of the facts in the case. In other words, it was not for the court to conduct some rebalancing itself. Similarly, in this case, the Environment Agency is in a better position than the court to make the necessary judgements and cost-benefit assessments about flooding at Minsterworth Ham."

80. In the present case, the OBC contained a lengthy and detailed cost-benefit analysis of the different options and, as it was required to do, had specific regard to the Welsh National Strategy under section 8 of FWMA 2010. In doing so, it took into account the position of homeowners, transport infrastructure and agricultural landowners, as well as the proper allocation of resources. The analysis included an "agricultural damage assessment" in respect of the increased flood risks for agricultural land located behind the embankment, but the OBC observed that "Welsh Government National Strategy for FCERM in Wales does not prioritise the protection of businesses." It is also relevant to note that the Decision does not impose any new legal obligation on the agricultural landowners, and that NRW did not make any assumption that the landowners would in fact choose to maintain the embankment. I fully accept that the question of fair balance is ultimately one for the court, as was made clear in *Sporrong and Lönnroth v Sweden*. However, in my judgment, it is not reasonably arguable that this court should consider itself to be in "[a] position to second guess [NRW's] expert judgment and cost/benefit analyses".

81. Insofar as the renewal grounds imply that NRW ought to have taken its interests as IDB into account in performing the balancing exercise, the point is only a variant formulation of Ground 1 and, anyway, adds nothing of substance to this ground.

82. Accordingly, I refuse permission on Ground 3.

Ground 4

83. Ground 4 is that NRW gave inadequate reasons for the Decision.

84. In refusing permission on this ground on the papers, Judge Jarman KC said:

> "[T]he Online [scil. Outline] Business Case shows clearly why the decision was taken in respect of such risk. It is not arguable that the reasons were not adequate."

85. The claimants' renewed application for permission puts Ground 4 on the following basis. Although there is no express obligation on NRW to give reasons for the Decision, fairness requires that reasons be given when support that has long been provided is now to be permanently withdrawn. NRW has chosen to give reasons, but these leave substantial doubt as to the basis of the Decision. In particular, NRW's response to the claimants' pre-action protocol letter refers to a "Withdrawal of Maintenance Methodology", which however is not mentioned in the Decision Letter or the OBC, is not publicly available, and has not been provided. Further, the reasons provided leave uncertainty as to NRW's assessment of options identified in the SOC, its assumptions

as to future maintenance of the Embankment by landowners, and future support by the IDB. The claimants have been substantially prejudiced by this uncertainty.

86. The Statement of Facts and Grounds does not actually state any basis for a duty to give reasons. Assuming, however, that such a duty existed, I regard the complaint that insufficient reasons were given as wholly unreal and totally unarguable. Long and full reasons were given in the OBC; these leave no reasonable room for doubt as to the (ultimately rather simple) rationale of the Decision. One does not establish a failure to give reasons by taking pot-shots at details in a very lengthy document. If there is said to be an aporia or leap of logic in the decision-making process, a rationality challenge may lie. That is not this case and is not the same as a failure to give reasons.

87. Mention should be made of one specific argument in respect of Ground 4, set out in paragraph 96 of the Statement of Facts and Grounds and advanced by Mr Upton both orally and in paragraph 94 of his skeleton argument, as follows. NRW has apparently not prepared a statement in respect of precepts issued to the IDB, as required by section 141(3) of WRA 1991 (see paragraph 20 above). Therefore it is not known on what basis precepts have been issued since 2020, and there is a corresponding lack of clarity about what account NRW has taken of work undertaken by landowners or work that might in future be undertaken by the IDB. It is unclear to me whether the factual premise of this complaint—namely, that precepts were not accompanied by statements under section 141(3)—is correct or not. However, in the present context the complaint is manifestly bad, for reasons set out in the Detailed Grounds of Defence. The duty under section 141 to give an explanation *to the IDB* of the charge in a precept has nothing to do with any duty to give reasons for decisions regarding the exercise of the power under section 165 of WRA 1991. Whether or not NRW was under the latter duty, it has explained in detail and at length the reasons for its Decision.

88. Accordingly, I refuse permission on Ground 4.

Conclusion

89. I reject Grounds 1 and 2 and refuse permission on Grounds 3 and 4. Therefore the claim is dismissed.