IN THE HIGH COURT OF JUSTICE **Claim No: 20261**

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

R. (ENVIRONMENTAL JUSTICE NOW)

Claimant

v

SECRETARY OF STATE FOR ENVIRONMENT,

FOOD AND RURAL AFFAIRS

Defendant

SUMMARY

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1. In September 2026, the Secretary of State for Environment, Food and Rural Affairs ('SoS') adopted an Environmental Delivery Plan ('EDP') for hazel dormice, covering the South-West of England, pursuant to Part 3 of the Planning and Infrastructure Act 2025 ('the 2025 Act'). The EDP covers the period 2026-2036.

2. The hazel dormouse, *Muscardinus avellanarius*, is listed in Schedule 2 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). It therefore constitutes an 'environmental feature' under section 61(2) of the 2025 Act due to being a 'protected species' under section 99 thereof.

3. Section 65 of the 2025 Act provides:

> ***"65 Making of EDP by Secretary of State***
>
> *[…]*

(3) The Secretary of State may make the EDP only if the Secretary of State considers that the EDP passes the overall improvement test.

(4) An EDP passes the overall improvement test if, by the EDP end date, the effect of the conservation measures will materially outweigh the negative effect of the EDP development on the conservation status of each identified environmental feature.

(5) In subsection (4), "the negative effect of the EDP development" means the effect, caused by the environmental impact, as identified in the EDP in accordance with section 61(1)(b), of the maximum amount of development to which the EDP may apply, as specified in accordance with section 60(5).

[…]"

4. When adopting the EDP, the SoS published this statement:

"This EDP includes crucial conservation measures for the hazel dormouse, a species treasured by the nation for its vital contribution to communities across the country. I have carefully considered the conservation measures included in this plan and am satisfied that this EDP passes the overall improvement test under section 65(3) of the 2025 Act. The measures in the EDP build upon the historic success of hazel dormice conservation measures taken by ministers in the early 2000s. I therefore have high hopes that we can replicate this national achievement again today and that by 2036 the conservation measures will materially outweigh the negative effects of development on the conservation status of the hazel dormouse. I am further confident that these measures deliver great value for money for developers."

5. Neither this statement, nor the EDP, contain any explicit reference to the climate crisis.

6. The majority of conservation measures in the EDP are mitigation and compensation measures as defined in regulation 2 of The Environmental Delivery Plans (Appropriate Prioritisation) Regulations 2026 ('the Prioritisation Regulations').

7. Regulation 3 of the Prioritisation Regulations provides:

"Appropriate prioritisation

(1) When preparing a draft EDP Natural England must prioritise—

(a) avoidance measures over mitigation measures and compensation measures, and

(b) mitigation measures over compensation measures,

where they consider it is appropriate to do so.

(2) When considering making a request to the Secretary of State to amend an EDP, Natural England must prioritise—

(a) avoidance measures over mitigation measures and compensation measures, and

(b) mitigation measures over compensation measures,

where they consider it is appropriate to do so.

(3) When considering whether it is appropriate to prioritise conservation measures Natural England should have regard to the extent to which they deliver value for money.

(4) Natural England must set out in a draft EDP or an EDP as proposed to be amended which conservation measures proposed will, in whole or in part, be—

(a) avoidance measures,

(b) mitigation measures, or

(c) compensation measures.

(5) Nothing in this regulation affects the order in which Natural England implements the conservation measures set out in an EDP after it has been made or amended by the Secretary of State."

8. The group Environmental Justice Now is highly critical of the EDP. In a press release, it stated the following:

> *"Environmental Justice Now is deeply concerned about the hazel dormouse EDP adopted by the Secretary of State today. The hazel dormouse is a key indicator species for healthy ecosystems, particularly woodlands and farmlands, contributing to vital ecosystem services that our lives, health and wellbeing as a society depends upon.*
>
> *The EDP is full of uncertainties and unfit for a world in climate chaos. It fails to consider how the increasing frequency and intensity of wildfires will impact upon woodland conservation measures. It also ignores the impacts of warmer winters on the dormouse's hibernation cycle and food availability.*
>
> *Our Head of Campaigns said: "Protecting what we depend upon is not a fashion trend – we cannot simply rehash the noughties. The context has changed drastically, thanks to the man-made climate crisis. Neither we, nor the hazel dormouse can escape this reality."*
>
> *Environmental Justice Now is further appalled by the failure to prioritise avoidance measures that prevent harm to hazel dormice. EDPs are meant to serve a common good rather than enhance developer's profits by settling for cheaper and weaker mitigation and compensation measures. This EDP sacrifices prevention measures on the altar of 'value for money' for developers, instead of considering the value for money for society at large that comes with protecting biodiversity as the basis of healthy and just societies."*

9. After following the Judicial Review Pre-Action Protocol, Environmental Justice Now filed an application for judicial review on the following two grounds:

    a. **Ground 1:** The Secretary of State unlawfully considered that the EDP passed the overall improvement test in section 65(4) of the 2025 Act notwithstanding significant uncertainties as to whether the effect of the conservation measures

would materially outweigh the negative effect of the EDP development on the conservation status of the hazel dormouse.

b. **Ground 2:** The Secretary of State's adoption of the EDP was unlawful as a consequence of their acceptance of Natural England's prioritisation of avoidance, mitigation and compensation measures. In considering 'value for money' only from the developer's perspective, the EDP was in breach of regulation 3 of the Prioritisation Regulations.

10. Ms Justice Bird granted Environmental Justice Now permission to apply for judicial review on the above two grounds on the papers.