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Desmond Swayne's Third Adjournment debate.....

Jim Sheridan (in the Chair): Order. We must now move to the next debate.

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Lymington River

12.30 pm

Mr Desmond Swayne (New Forest West) (Con): I feel almost like a country parson reading the banns of marriage—"this being for the third time of asking"—given that this is the third time I have dragged a Minister to Westminster Hall to answer for the actions of the Government on the protection of the Lymington river.

Furthermore, as with the controversial actions of country parsons in respect of changing hymns and modern unpopular liturgies, I find that my own actions in my assiduous dedication to this task have proved equally unpopular. While I was going about my duties in Lymington on Friday, a charming but forceful lady took me aside and demanded to know why I was so "anti-ferry". Actually, I am not "anti-ferry" at all. My starting point is that there is a critical need in both the Lymington and Yarmouth economies for the ferry service and I want to see that ferry service preserved. However, there are other interests that have to be balanced against those of the ferry service, not least the protection of the European Natura 2000 sites, the importance to the local economy of the yachting interest in Lymington, and indeed the long-term survival of Lymington as a harbour, which is protected by the local mud flats. The diminution of those mud flats poses a long-term threat to the future of Lymington. So, all those interests have to be balanced.

It is the law that provides protection and balance. The fact that we are now having a third Adjournment debate on this issue and that we have had two spats in court, both of which the Government lost, is down to the failure to implement the law properly. The Government gave all sorts of commitments in signing up to the relevant European directives, but then failed properly to transpose those directives into English law.

I do not want to repeat the entire history of this subject; those who are interested in it can read the *Official Report* of the two previous Adjournment debates. However, I shall give a potted history now. We have always been led to believe the received wisdom that the erosion of the Lymington salt marshes was an inevitable consequence of nature—"It's the weather and there's nothing we can do about it". Of course, those salt marshes are vital to Lymington, and the Lymington harbour commissioners have come up with a plan worthy of our Victorian forebears in its engineering prowess. They are going to build a sea wall—a monument to King Canute—to hold back the waves and save at least some of the salt marsh. I am not qualified to say whether that plan will survive current economic realities or whether it will actually work.

However, as a consequence of this controversy, a number of studies have been carried out of bathymetric data-a subject on which I am uniquely unqualified to pontificate. I understand, however, that the findings of the Southampton university team who carried out one of those studies suggest that the salt marshes, if left to nature alone, would actually be accreting-growing and extending-and that it is only the introduction of the particular form of propulsion used by the Lymington ferry from the 1960s onwards that has led to the swift erosion of the salt marshes. That erosion has been even swifter since the introduction of the new "W"-class ferries, a development that has sparked the recent controversy.

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These are issues well beyond my competence, as I said, but they are precisely those that must be clearly understood and examined in that appropriate assessment. A principal reason for the court's determining that the new ferries had been unlawfully introduced on to the Lymington river was that Wightlink was its own competent authority for the determination of that appropriate assessment. Notwithstanding reams of assurances, in correspondence from Ministers and in parliamentary answers to my questions, that the Maritime and Coastguard Agency was the appropriate authority, when it came to the crunch it turned out that because the Government had been so cack-handed in implementing the habitats directive, Wightlink was its own competent authority. The judge said it had shown a complete disregard for its public responsibilities, separating them from its own commercial interests, and that as a consequence it was absolutely invalid.

The question is what to do next. Wightlink has said it will rerun the appropriate assessment and, in addition, do a full environmental impact assessment. The difficulty is that Wightlink remains its own competent authority. Wightlink will still be judge and jury in its own court. Wightlink has said, "No, no. We're going to form a new company-Wightlink CA, or Wightlink competent authority-to judge the appropriate assessment." Key questions arise. How will the commercial interests of Wightlink CA be different from the commercial interests of Wightlink itself? Will it have a different board of directors? There is a clear need in these assessments for an independent referee.

Wightlink has said it will carry out a full environmental impact assessment. That is a huge undertaking, involving public consultation. It must consider the whole environment, including the increase in heavy goods vehicles traffic through the Forest to take advantage of the greater capacity of the ferries, especially as the bridge restrictions at the mouth of Lymington at the Ampress site mean that those lorries have to travel through the sensitive parts of the national park. All those issues give rise to great local concern about the impartiality of Wightlink, because it already has form on this matter. Why should we trust it now, given that the court could not trust it earlier?

When Wightlink announced that it would do an environmental impact assessment, it set out the details of how it was to be achieved, including the setting up of Wightlink CA, in a letter from its solicitors. The letter concludes by saying what the outcome would be before the assessments have begun. It states:

"Natural England have advised on a rate of erosion of the existing habitat areas in the European Sites that can, in their view, be attributed to the operation of the 'W' class ferries. The mitigation works will prevent loss of an equivalent or greater area of habitat (than the loss attributable to the ferries) elsewhere in the European Sites."

There it is: it has already concluded that the mitigation works it is to undertake will compensate for any erosion. Before the assessments are undertaken to establish the rate of erosion and other facts, we have the conclusion that the mitigation works will take care of it. The conclusion has been announced before the studies have even begun.

Wightlink goes on, in a most extraordinary piece worthy of Alice in Wonderland, to say:

"The effect of the mitigation works is therefore to prevent an adverse effect on the European Sites by reference to their conservation

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objectives. Consequently, adverse effects on the integrity of the European Sites are avoided and the tests and approach under article 6(4) (and regulation 62 of the Habitat Regulations 2010) are not engaged. The mitigation works will prevent the harm occurring and consequently the works are appropriately considered mitigation and not compensation."

In plain English, that gobbledegook means, "Notwithstanding the damage we are doing to the Natura site, because we are compensating by dumping some mud somewhere else, no damage has occurred." This is a most ridiculous interpretation. It did not fool the Hampshire and Isle of Wight Wildlife Trust. In a classic piece of English understatement, in its letter to me it says:

"We remain to be convinced that on a practical level the proposals have been sufficiently well considered and will deliver the habitat benefits that would be required to provide assurance that the introduction of the new ferries will not have an adverse effect on the integrity of the Natura 2000 site. We also continue to seek clarification as to whether the scheme is in fact compensation rather than mitigation."

So we have this issue of compensation and mitigation. Natural England has already accepted a measure of damage and adverse effect on the sites. It tends to rather understate it. In its stakeholder response to the study carried out by Natural England, Wightlink says:

"The revised impact requiring mitigation is quantified by Natural England as increasing from 1.05 to 1.55 ha per decade (for explanation see Appendix 5). This predicted impact is still very small year on year (0.16 ha) only building to a more substantial impact and risk of adverse effect over several years."

When people put things in newspeak, it is an attempt to confuse the general reader. I did not come across "ha"-whatever "ha" is-in my O-level maths, so one feels intimidated and does not ask the question but simply accepts the conclusion that it is very small. I suspect it is a hectare.

The Minister of State, Department for Environment, Food and Rural Affairs (Mr James Paice) *indicated assent.*

Mr Swayne: The Minister nods, so it is a hectare. So 0.16 of a hectare is 1,600 square metres, and that is the impact each year. I do not consider that to be very small at all.

Let me outline for the Minister what I think the law states should happen. For the purposes of the habitats directive one has a plan or a project. That was one of the first battles in court. Yes, it is a plan or a project. Will it have an adverse effect? In order to determine that, one needs an assessment. Whether one needs an appropriate assessment or a full environmental impact assessment in addition is a question of law, but one needs the assessments to answer the first question.

If the assessments suggest there is no adverse impact, one can go ahead with the project; if yes, stop. Then, ask the next question. Is there an alternative—a question that has been completely avoided by the current process? There are all sorts of other alternatives, including a smaller ferry with a different means of propulsion that is not so damaging to the river. Nevertheless, is there an alternative? If yes, take the alternative. If no, that is when it lands on the Minister's desk.

If the answer is no then the Minister has to decide whether there is overwhelming public interest in the project proceeding, notwithstanding the damage it will

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do to the sites. That is where, if I were the Minister, I would probably take a step back and say, "Well actually, when it comes down to it, we do need the ferry." But we have not been through that assessment yet; we have not reached that point. It is at that point, if the Minister decides there is an overwhelming public interest in the project proceeding, that he considers compensation and doing something else to build up the salt marshes elsewhere.

The process that has been undertaken in Lymington has put these elements in completely the wrong order. We are already talking about compensation, although an attempt is being made to say that it is actually mitigation: "Don't mention the word 'compensation'—it's really mitigation—because of the implications that arise from that definition." Clearly, however, that is the process that ought to be followed and I fear that if it is not, we will end up with another expensive spat in court.

Let me briefly describe to the Minister my desired end state. I hope that we end up with a viable ferry service between Lymington and Yarmouth, and that we can come to an accommodation on the basis of preserving the Natura sites and the yachting that is vital to Lymington's economy. I fear that we will be presented with a *fait accompli*: regulators were asleep on the watch. Whatever the reason, we now have expensive ferries, built in Bulgaria, operating on the Lymington river and doing damage. How do we get round that? I hope that with some means of determining the compensation and the way forward, we can reach an agreement that Wightlink will go to some lengths to ensure that those ferries are, in a reasonable period, sold on for use elsewhere, or used on another of its routes, while an appropriate ferry for the conditions of the Lymington river is introduced as a replacement. In reality, this is a highly profitable route. It has one of the highest charges per passenger

mile of any ferry in the world, a monopoly inherited from British Railways. The company ought to be able to make a go of it. There should be no question of any threat to the viability of the continued service.

I close by asking the Minister to reflect on this. Notwithstanding the failure of Government and the regulators to spot this on the horizon and deal with it effectively, and leaving aside the Adjournment debates that I held in order to raise the issue with Ministers, it has been a small number of local yachtsmen who have had to take the initiative and raise the huge sums of money to take the matter to court. I hope that they are not going to have to do so again.

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The Minister of State, Department for Environment, Food and Rural Affairs (Mr James Paice): I start by congratulating my hon. Friend the Member for New Forest West (Mr Swayne) on, as he says, his third Adjournment debate, the first to which I have had the pleasure of responding. I know that he feels strongly about the issue. I think he is aware that the matter falls within the remit of the Under-Secretary of State for Environment, Food and Rural Affairs, my hon. Friend the hon. Member for Newbury (Richard Benyon), who is responsible for marine issues, but unfortunately cannot be here today. I preface my remarks by saying that if, as I strongly suspect, I do not entirely allay all the concerns

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of my hon. Friend the Member for New Forest West, I am sure that my hon. Friend the Under-Secretary would be happy to meet him and go through them in more detail.

On the issue of biodiversity, I was astonished when reading the brief by the scale and significance of the salt flats to which my hon. Friend the Member for New Forest West referred so clearly. Lymington harbour is part of a complex of estuaries in the Solent which supports a diverse coastal ecology. Large parts of the area, as he has said, are designated under a number of directives because of the habitats and species there.

By way of background, for which my hon. Friend will understand the need, the sites designated under the habitats and birds directive enjoy a degree of protection commensurate with their biodiversity importance. Any plans or projects, as he rightly said, proposed in the area are subject to an initial screening to decide whether the plan or project may have a significant effect on the site. Unless a significant effect can be conclusively ruled out, the plan or project needs to be subject to a full assessment via a legal procedure set out in those regulations. That is known, as my hon. Friend said, as an "appropriate assessment" and responsibility for undertaking it rests with the "competent authority", the identity of which is clearly one of his concerns. It is the body proposing to undertake, or give consent to, the plan or project. The purpose of the assessment is to ascertain whether the plan or project is likely to have an adverse impact on the integrity of a protected site. That assessment includes a detailed study of impacts and mitigation measures, and an assessment of alternatives. In carrying out an assessment, the competent authority is required to "have regard to" the advice of the appropriate statutory nature conservation body, which in this case is Natural England.

Having said that legal bit, I should say that I fully understand my hon. Friend's concerns about Wightlink's decision a year ago to introduce larger ferries on the route. I could argue with him about some of the issues to which he referred, although I would be arguing from almost the same position of lack of understanding to which he referred in other contexts. The Department is not aware of having lost two cases, as I think he suggested. There have been two cases in court, one was the judicial review, to which he referred, and the other was an application for an injunction to stop the ferries that was refused. We could debate the rights and wrongs of the issue, but they were fully aired at the hearing in December, which culminated in the judgment handed down in February that is now a matter of public record. I strongly endorse the point made at the outset of his remarks about the importance of the ferry and the commercial need for it in his local economy and that of my hon. Friend the Member for Isle of Wight (Mr Turner). Ferries are crucial for both.

We now need to concentrate on the measures being taken to ensure that the protected sites suffer no adverse impacts from the new ferries so that the service can continue as intended. I do not want to open a debate into all the issues covered by the judicial review hearing, but two key points emerged from the judgment. First, the introduction of the type of larger ferry in question was, as my hon. Friend the Member for New Forest West said, a plan or project under the terms of the habitats directive, and, secondly, the judgment confirmed that Wightlink is the competent authority responsible

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for assessing the impact of the ferries. Although DEFRA has a role to oversee the implementation of the directive in the UK, the court agreed that it would not be appropriate for the Department to assume the role of competent authority, which I think is what my hon. Friend was suggesting, nor did the court suggest that the fact that Wightlink is a private company disqualifies it from discharging its duties as a statutory harbour authority.

Some of the faults that my hon. Friend described, and his desired final outcome, are issues that Wightlink itself, as the competent authority, should take into account, particularly the consideration of alternatives. I fully understand his desire for those alternatives to be considered. Since the judgment, Wightlink and Natural England have worked very closely to assess the potential impacts of the new ferries and to consider what mitigation works would be needed to avoid any adverse impacts. Both parties have invested considerable time and money in that process and used their own expert consultants. That assessment includes mapping evidence to assess changes to the navigational channel, consideration of sediment movement and a review of other influences on the navigation channel. The work also considered propulsion and ship wash modelling, and other likely effects from the increased size of the new ferries.

My hon. Friend referred to the damage that he believes has already been done by the ferries. My understanding is that the studies into the loss of the salt flats and salt marshes go back much longer; apparently, the Keyhaven marshes experienced a 50% loss between 1971 and 2001, and the Lyminster marshes experienced a 63% loss between 1946 and 2001. No study to date has been conclusive on the cause of the loss. I fully understand my hon. Friend's concern at those losses. Having grown up in a similar area on the east coast, I fully understand the importance of the salt marshes, but we need to have a sense of perspective and not necessarily to blame everything on what has happened recently.

My hon. Friend had a little tease about the meaning of the word "ha", and I think he understands that it is, as he implied, a hectare. Natural England has quantified the predicted habitat loss and deterioration caused by the ferries and requiring mitigation as 1.6 hectares of inter-tidal habitat per decade. My hon. Friend suggested that the organisation had come to a decision before the assessment, and we can argue about the precise detail, but it is important that we start with a marker as to where we need to be on mitigation.

Wightlink and Natural England have had detailed discussions about mitigation works that Wightlink could undertake to ensure that the operation of the ferries has no adverse impact on the protected sites and can thus continue without breaching the Government's obligations under the directive. A programme of work has been proposed that involves taking material acquired from the regular dredging of the local moorings and depositing it in an area of deteriorating and eroding salt marsh. That would prolong the life of the salt marsh and mudflat habitat and offset the possible increase in the erosion of the mudflat attributed to the ferries. That work will of course be undertaken and funded by

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Wightlink, and it will require the consent of other regulators. I understand that Wightlink intends to start the work next spring.

Let me address my hon. Friend's point about whether the proposals comply with the habitats directive. I am satisfied that it is acceptable to take into account proposed mitigation works when coming to a conclusion about whether a plan or project would have an adverse impact on the integrity of a protected site. I am also satisfied that works intended to avoid an adverse impact should be regarded as mitigation rather than compensation. I understand that Wightlink and Natural England have taken counsel's opinion on the issue.

Clearly, this is a complex area. Like my hon. Friend, I do not pretend to be an expert on it, but we need to look at what we can do to counter the risks. First, the ferries are being monitored. As he said, the Lymington harbour commissioners undertake regular bathymetric surveys, which will pick up any long-term erosion. Wightlink has also placed graduated stakes at various points to work out whether there is any evidence of ferry thrusters affecting the mudflats. So far, there is no evidence to suggest that the impacts will be different from those already predicted. However, we are clearly in an unknown area, and the science suggests that any erosion will be gradual and cumulative, so it may take several years to build a firm picture. That is why the monitoring is designed to give early warnings, which will enable us to move quickly if we need to.

That brings me to my last point, which relates to my hon. Friend's question about what happens if Wightlink and Natural England have got things wrong. Ultimately, the most important safeguard is the Secretary of State's power to control the operation of the ferries. If, at any stage, Natural England provides advice that there is evidence to suggest that the operation of the ferries is likely to damage the site, the Secretary of State has the power under the Conservation of Habitats and Species Regulations 2010 to make a special nature conservation order and to serve a notice on Wightlink requiring it to stop any operation specified in the notice. I must repeat that Natural England predicts that the impact of the ferries is most likely to be gradual and cumulative. On that basis, it has advised that

provided that Wightlink successfully delivers mitigation works starting next spring, it will avoid any adverse effect on the integrity of the protected sites. As things stand, therefore, we have no clear scientific basis on which to support a decision to stop or suspend the ferry operation at the moment.

I am really grateful to my hon. Friend for raising this subject, because the debate opened my eyes to an issue with which I was not familiar. Clearly, our main priority is to comply with our obligations under the habitats directive and to protect these important habitats, and that is what we want to achieve. If we can do so while catering for the commercial needs to which my hon. Friend referred, that will satisfy us all. If he wishes to pursue the matter, he can talk to the Under-Secretary of State for Environment, Food and Rural Affairs, my hon. Friend the Member for Newbury. If all else fails, the Government ultimately have the power to stop the ferries, but I imagine that my hon. Friend the Member for New Forest West and I would like to think that we can work things out without having to do that.

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