

Branding the Broads – Outcome of the Judicial Review

Report by Chief Executive

Summary:	This report considers the outcome of the Judicial Review into the decision by the Broads Authority on 23 January 2015 to adopt the brand Broads National Park when marketing and promoting the area.
Recommendation:	That the Authority welcomes the outcome of the Judicial Review hearing and the confirmation it provides for the legality of the decision it took in January 2015.

1 Background

- 1.1 The current Broads Plan contains the following objective:

“Promote a clear and consistent Broads ‘brand’ that defines the special qualities and status of the area as a resource for all” (PE1).

Developing a clear and consistent brand was a strategic priority for the Authority in 2013/14 but work on this objective was delayed “due to other more pressing priorities relating to the Comprehensive Spending Review and Navigation Charges for 2014/15”. Research on the topic, including seeking legal advice, finally began at the beginning of 2014.

- 1.2 At its meeting on 26 September 2014, the Broads Authority resolved unanimously to consult on the use of the term ‘Broads National Park’ to promote the area’s special qualities and encourage more visitors to Norfolk and Suffolk. The Authority used its standard list of organisations for the consultation and the Chairman of the Authority wrote directly to Lord de Mauley, the Minister in Defra responsible for National Parks. The standard period of three months was allowed for responses to the consultation ending on 31 December 2014.

- 1.3 The results of the consultation were reported to the meeting on 25 January 2015 and the Authority after considerable debate

RESOLVED by 11 votes in favour and 3 against with 2 abstentions

- (1) *Having reviewed the comments made in response to the consultation set out in the appendices, the Authority:*

- (i) *noted and confirms that the proposal does not involve any change in the legal name or functions of the Broads Authority;*
 - (ii) *noted the generally positive response from the majority of stakeholder organisations who had responded;*
 - (iii) *resolved that the use of the brand “Broads National Park” will be conducive to the achievement of the three general duties in section 2 (1) of the Norfolk and Suffolk Broads Act 1988, particularly to the enjoyment and understanding of the Broads special qualities and that the use of the brand will have a positive effect on the factors set out in section 2(4) of the 1988 Act;*
 - (iv) *that the brand “Broads National Park” be adopted for marketing related purposes with immediate effect using the powers in Section 111 of the Local Government Act 1972; and*
 - (v) *that branding guidelines be produced for both staff and other organisations use and an additional £5,000 be allocated to the Communications budget for 2015/16 for the implementation of appropriate signage in collaboration with other organisations where possible.*
- (2) *That, in accepting the above, the Authority also*
- (vi) *resolved, in line with the suggestions from the Broads Hire Boat Federation & the Norfolk and Suffolk Boating Association, not to pursue the ambition in the Broads Plan 2011 for the Broads to become a national park in law;*
 - (vii) *for the avoidance of doubt, the Authority indicates that it has no intention of seeking the application of the Sandford Principle to the Broads Authority’s functions because it is of the view that the Habitats Regulations provide sufficient protection for the very special qualities of the area; and*
 - (viii) *delegated to the Chief Executive, in consultation with the Chairman as appropriate, the power to take such steps and obtain any advice required to protect the Authority’s position and to implement the project in accordance with the resolution and legal advice.*

1.4 A letter before action was sent on behalf of Mr and Mrs Harris of Catfield Hall on 16 April 2015, one week before the limitation period for a Judicial Review was due to expire and the Judicial Review Claim Form lodged with the High Court of Justice on 22 April.

1.5 On the 8 July 2015 the matter was raised by Keith Simpson MP in a Westminster Hall debate. The Defra Minister responsible for National Parks,

Rory Stewart, said that he was “more than comfortable” with the move to call the Broads a National Park. He added that the title was a “common sense term” which allowed the public to understand the protected status and special qualities of the Broads.

- 1.6 The application for permission to apply for Judicial Review was initially refused by the Honourable Mrs Justice Patterson on 13 July based on the papers submitted by both parties. A Notice of Renewal of claim for permission to apply for Judicial Review was lodged with the Court on 22 July 2015. Permission was subsequently granted by Mr Justice Singh on 12 August to allow the claim for Judicial Review to be listed for a full hearing on the basis that there may be an important point of developing public law which had not been considered before the courts.
- 1.7 The hearing was held on 10 and 11 February 2016 before Mr Justice Holgate and the judgement can be read on the Authority’s website.
- 1.8 The Court was asked to consider three grounds of challenge:
 - (i) the decision was ultra vires (i.e. the Authority did not have the power brand the Broads in this way);
 - (ii) the Authority had regard to an immaterial consideration, namely that the Habitats Regulations provided the required level of protection for the biodiversity of the Broads against damaging activities; and
 - (iii) the Authority’s decision was procedurally unfair because of the consultation process.

The claim was dismissed on all three grounds.

- 1.9 This is an important decision for the whole of Norfolk and Suffolk supporting the presence of the Broads in the East of England as the Broads National Park. The use of the term would be not just a welcome boost to the important tourism industry but also helpful to conservation organisations such as the Wildlife Trusts and the RSPB in attracting visitors to their reserves and promoting understanding of the very special wildlife present in the Broads.
- 1.10 The Claimants sought leave to appeal the decision and this has been refused. It is hoped this is the end of the matter. However, the Claimants do have 21 days in which to file an appellant’s notice seeking permission to appeal from the Court of Appeal itself. That is entirely a matter for them. In the meantime, the judgment is binding and the Authority can use the term Broads National Park to market the area and encourage local companies and partners to do the same. Members will be updated at the meeting on any further developments. The Broads Authority will continue to call itself as such and has stated that it does not intend to pursue any legal route to change the status of the area or adopt the Sandford Principle.
- 1.11 The Broads Authority has spent around £60,000 on external legal costs defending its decision. This has all been funded from National Park Grant. The time and money defending the Authority’s decision is regretted but in the

face of such a challenge necessary and of course the benefits for the area are very significant.

- 1.12 For those who have followed the case or are interested in National Parks the judgment contains some fascinating insights.

Para 73: “The starting point must be that the National Park legislation has no legal monopoly over the use of the term “national park”, whether capitalised or not. It is a part of our ordinary language”.

Para 74: “However... Parliament itself made the assessment that the qualities of the Broads made it appropriate to impose a legal regime which included the same twin objectives as underpin the National Park code.”

Para 87: “No reasonable member of the public would see the use of the words “Broads National Park” in promotional literature as referring to the specific legal regimes governing either the Broads or National Parks in the UK.”

- 1.13 I am advised that the judgment provides no authority for the wider arguments such as London branding itself a national park. The most important part of the judgment in this respect is the reasoning as to why the Authority has not misled the public. This highlights that the key and only point of distinction relied on by the Claimants between the 1949 Parks Act and the Broads is the Sandford Principle, and the judge did not think that the Sandford Principle was integral to people’s understanding of what a national park was.
- 1.14 This has been a team effort. Our Minister, Rory Stewart, defended the Authority’s position in a Westminster Hall debate. We received the backing of all the national park authorities in the UK, all our constituent local authorities and the two Chief Constables. The Authority’s preparation of its case was assisted by David Coleman (ex-Defra and Countryside Commission) who provided expert advice and moral support us through the process. Our thanks also go to Mark Pendlington (Group Director of Anglian Water), Simon Altham (MD of Hoseasons), Julian Roughton (CEO of Suffolk Wildlife Trust), James Berresford (ex CEO of Visit England), Caroline Topping and Hugh Taylor (Mayors of Beccles) and Katie Lawrence (ex Chair of Broads Tourism).
- 1.15 Stephen Johnson and Jacquie Burgess, Chairs of the Broads Authority, played important roles in the drafting of the Consultation Document which was instrumental in the whole process, as did a wide variety of members of staff.

2 Conclusions

- 2.1 Hopefully, the decision of the Court resolves a long running saga. In 1989 when the Broads Authority was established and the Broads was given an equivalent status to a National Park, the organisation used the strapline “Britain’s newest and very special National Park” but following objections dropped that characterization in the early 1990s. It is long overdue that this important landscape can use the term Broads National Park to promote the special qualities of the area to the wider world.

Background papers:	Consultation Document – “The Broads National Park – making the most of a brand which is internationally recognized”
Consultation on the report	Nigel Giffin QC
Author:	John Packman
Date of report:	7 April 2016
Broads Plan Objectives:	PE1
Appendices:	APPENDIX 1 - Copy of the Order of the Court

Claim No: CO/1866/2015

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

Before The Honourable Mr Justice Holgate

B E T W E E N:

THE QUEEN
on the application of
TIMOTHY CHARLES HARRIS AND ANGELIKA HARRIS

Claimants

- and -

BROADS AUTHORITY

Defendant



ORDER

UPON hearing Leading Counsel for the Claimants and for the Defendant upon the Claimants' claim for judicial review dated 22 April 2015

IT IS ORDERED THAT:

1. The claim for judicial review is dismissed.
2. Each Claimant shall pay £5,000 towards the Defendant's costs of these proceedings.
3. The Claimants' application for permission to appeal to the Court of Appeal is refused.

Dated: 12th April 2016

By the Court 1