

Annex 7 - Article 1 of Protocol 1 to the European Convention on Human Rights and Schedule 1 to the Human Rights Act 1998

- 1.1 In taking into account the impact of any decision on the current landowner, the Authority must consider Article 1 of Protocol 1 to the European Convention on Human Rights and Schedule 1 to the Human Rights Act 1998, namely, the right to property (which includes rights associated with that property, such as the right to use it in any particular way):

“1. 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.

2. 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.”

- 1.2 The relevant law underlines the need to act lawfully, fairly and proportionately. To start with, where interference with the enjoyment of property rights is contemplated, as in the current case, that interference must be lawful. This means there must be a legal basis for making the decision, exercised in a way that is compatible with the rule of law and not arbitrary. The decision maker should then consider carefully whether the interference with protected rights is necessary in the public interest. If it is, the decision maker must then consider whether the interference is proportionate to the legitimate public end sought to be achieved. Any interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. This means that members must identify both the public or community interests in question and the extent of the landowner's private interests and must conduct a careful balancing exercise in this regard.
- 1.3 There is a body of case law on the interpretation of the right to property, which indicates that a 'legitimate expectation' of using a right will generally enjoy the protection of the Protocol. For an expectation to be legitimate, it must be based on a legal provision or act (such as, in the current case, the certification of a particular use of land as lawful) bearing on the property interest in question. The commercial and financial impacts on the landowner of a revocation are relevant to the decision-making process. The state of uncertainty in which the owner of a property right might find itself as a result of delays attributable to the process is also relevant. Decision makers should also consider whether an alternative and less intrusive method would meet the public interest.
- 1.4 In this case, if the certificate is revoked this would not actually deprive the landowner of the property, but it would amount to a substantial interference with the landowner's rights to use the land, which was probably purchased in reliance on the certificate. There would be a decrease in the commercial value

of the land, and the landowner would be unable to make use of the investment made in purchasing the land, and no compensation for this loss is contemplated by the Town and Country Planning Act 1990. The decrease in land value must also be considered in the light of the fact that the current landowner is a successor in title and had no involvement in the application for the certificate, nor at the time of purchase would it have been aware of any suggestion that the application process was flawed. The passage of time since the issue of the certificate is also relevant.

- 1.5 In conducting the balancing exercise, the importance of protecting this nationally significant landscape also needs to be taken into account, which is likely to be negatively impacted by the potential use of the site if the certificate is not revoked, as well as the impact of potential development at this site on the amenity of neighbours. The protection of the environment is a strong public interest factor which will carry substantial weight, as will conservation and the sustainable utilisation of cultural heritage. These factors may be considered to be incompatible with the probable use of the land should the certificate not be revoked.