

## **A selection of case law concerning the legal standing criteria applied by the Danish Environment and Food Board of Appeal in regard to cases concerning environmental impact assessment of specific projects from August 2018 to February 2024**

### **Identification and selection of relevant appeal cases**

The Danish Environment and Food Board of Appeal has identified 16 appeal cases during the period from August 2018 until February 2024, where the following cumulative criteria are met:

- appeal cases under the Danish Environmental Impact Assessment Act, which, among others, implements the EIA Directive;
- an assessment of the legal standing criteria “any person with a legal interest in the outcome of the case”, according to the Danish Environmental Impact Assessment Act, and
- The Environment and Food Board of Appeal did *not* grant standing to the appellant.

From the 16 appeal cases mentioned above, the Danish Environment and Food Board of Appeal has selected eight cases, which will be elaborated in this report. The selection of appeal cases is based on the following additional criteria:

- It concerns a project of significant scale,
- the project affects a broader group, and
- the project constitutes a significant intervention in the surrounding nature.

Finally, the appeal case concerning the most recent project under the Danish Environmental Impact Assessment Act regarding the "Rowing Stadium at Bagsværd Lake" is included in this report. This concerns a new project at Bagsværd Lake, and thus not the same project as dealt with in the decision of the Nature and Environment Board of Appeal of 30 September 2015 (NMK-34-00494), where the board dismissed the appeal.

### **List of selected appeal cases**

Case 19/06808 2 (Gas Pipeline Baltic Pipe)

Case 19/08001 3 (Waste Management Facility)

Case 19/08631 4 (Asphalt Producing Facility)

Case 20/04066 4 (Wind Turbine Project near Tolstrup)

Case 20/05393 5 (Expansion of Biogas Facility with associated Facilities)

Case 21/00474 5 (Security Embankment at a Shooting Range Facility)

Case 21/09871 6 (Climate Adaptation Facility)

Case 22/07412 6 (Establishment of a Nature National Park)

Case 18/05034 (Bagsværd Rowing Stadium II)

The listed appeal cases are elaborated below.

### **Review of Selected Appeal Cases**

The Danish Environment and Food Board of Appeal conducts a specific assessment of legal standing in each case based on the criteria established in the Danish Environmental Impact Assessment Act, which implements criteria for standing as determined by the EIA Directive and the Aarhus Convention, as well as the derived practices from the EU Court of Justice and the Aarhus Convention's Compliance Committee.

In the Danish Environment and Food Board of Appeal's assessment of legal standing based on the criterion "anyone with a legal interest in the outcome of the case", the following aspects are particularly considered:

- The significance of the impacts that the project in question entails for the appellant,
- the nature of the appellant's interest concerning the specific project, and
- whether there are special circumstances concerning the appellant that mean the appellant is particularly affected by the specific project.

### **Case 19/06808 (Gas Pipeline Baltic Pipe)**

The case concerned the establishment of a gas pipeline across Jutland, Funen and Zealand, connecting the Europipe II Pipeline in the North Sea with pipelines in Poland. The appellant was a municipality through which the gas pipeline would pass. Among other arguments, the municipality stated that cheaper natural gas counteracts the incentive for CO<sub>2</sub>-neutral solutions and claimed to have standing on behalf of its citizens, referencing the Urgenda case from the Netherlands, where the Dutch government was imposed to reduce its CO<sub>2</sub> emissions, citing climate as a human right. The Board assessed that the appellant was not significantly affected by the project, and their interest was idealistic.

From the decision:

*"The Environment and Food Board of Appeal finds that Middelfart Municipality does not have legal standing in this case. The Board has in its assessment attached importance to the timeliness and significance of the impact that the specific project entails for the appellant. In its assessment, the Board also attached importance to a more idealistic interest of the municipality in preventing an increased CO<sub>2</sub> emission in Denmark due to the establishment of a new gas supply connection to another EU Member State, which cannot justify a sufficient interest under the Danish Environmental Assessment Act.*

*The Danish Environment and Food Board of Appeal notes that the Urgenda case<sup>1</sup>, including the Dutch courts' interpretation of the European Convention on Human Rights, does not lead to the conclusion that the appellant must be considered to have a sufficient interest in the present case. Furthermore, it is the Board's opinion that the two cases are not comparable."*

There were four other appellants who, based on the criterion "anyone with a legal interest in the outcome of the case", appealed the project. These four appeals were substantively deemed admissible, as the

---

<sup>1</sup> Stichting Urgenda v. De Staat Der Nederlanden, C/09/456689/HA ZA 13-1396, 24 June 2015, ECLI:NL:GHDHA:2018:2610, 9 October 2018 and ECLI:NL:HR:2019:2007, 20 December 2019

appellants in these cases were considered to have standing (19/06805, 19/06806, 19/06809, 19/06807). The pipeline would pass through the properties of three of the appellants. The last appeal was submitted by a local citizens' group. The case concerning the environmental impact assessment of the Baltic Pipe project was annulled and remitted due to the lack of accounting for the impact on Annex IV species, pursuant to the national implementation of the Habitats Directive.

#### **Case 19/08001 (Waste Management Facility)**

The case concerned the expansion of a waste management facility. The appellant lived approximately 4 km from the project area and the Board assessed that he would not be affected by the project either visually, in terms of traffic, or noise. There were no special personal circumstances concerning the appellant in the case.

From the decision:

*"The Environment and Food Board of Appeal finds that the appellant does not have standing in this case. The Board placed emphasis in this regard on the fact that the appellant lives about 4 km as the crows fly from the project area and that the appellant's residence and the project area are separated by a larger residential area, so there is no visual connection between the area and the property of the appellant and that the appellant will not be particularly affected by traffic, noise or other nuisance from the project. Based on this the Board finds that the appellant is not affected to an extent that would give rise to a legal interest in the outcome of the case."*

#### **Case 19/08631 (Asphalt Producing Facility)**

The case concerned the establishment of an asphalt-producing facility. The appellant lived about 1.3 km from the project area, and the Board assessed that the appellant would not be affected by project-related traffic, as the appellant's residence and project area were separated by a highway and a residential area. There were no special personal circumstances concerning the appellant in this case.

From the decision:

*"The Environment and Food Board of Appeal finds that the appellant does not have standing in this case. The Board placed emphasis on the distance between the appellant's residence and the project area, the fact that the appellant's residence and the project area are separated by the Hillerød highway and a residential area and that the appellant will not be particularly affected by traffic from the project. Based on this the Board finds that the appellant is not affected to an extent that would give rise to a legal interest in the outcome of the case."*

There were four other appellants who, based on the criterion of "anyone with a legal interest in the outcome of the case", complained about the project. The four appeals were deemed admissible as the appellants in these cases were considered to have legal standing (19/04602, 19/04612, 19/06151). The appellants were three water utilities collectively, a group of nearby residents collectively (where the closest one lived about 450 m from the project and there was open land and a highway between the appellant's residence and the project area) and a landowners' association. The Board did not uphold the appeal itself.

### **Case 20/04066 (Tolstrup Wind Turbine Project)**

The case concerned the installation of three wind turbines with a maximum total height of 149.9 meters. The appellant lived about 3.4 km from the nearest wind turbine, and the Board assessed that the appellant would not be significantly affected visually. There were no special personal circumstances concerning the appellant in the case.

From the decision:

*“The Environment and Food Board of Appeal finds that the appellant does not have standing in this case. In its assessment, the Board placed emphasis on the fact that the appellants’ house and property are approximately 3.4 km from the nearest installed wind turbine and that the appellants’ residence and project area are separated by hedges. Therefore, the Board has assessed that the visual impact on the appellant will not be significant. Based on this, the Board finds that the appellant is not affected to an extent that would give rise to a legal interest in the outcome of the case.”*

Another appeal against the same wind turbine project was deemed admissible (20/04068). The complainant was a nearby resident living approximately 800 m from the wind turbines. The appellant was assessed as having standing based on the impacts of the wind turbines on their house and property. The Board upheld the decision of the municipality.

### **Case 20/05393 (Expansion of Biogas Facility with Associated Facilities)**

The case concerned a significant expansion of an existing biogas facility with associated facilities by two reactor tanks, a sanitation facility, a substrate tank and an increase in existing silos. The appellant was a water utility in the area, and the Board assessed that the appellant would not be affected, as they did not extract groundwater from under the project area.

From the decision:

*“The Environment and Food Board of Appeal assessed that the appellant does not have standing in this case. The Board has placed emphasis on the fact that the project area does not lie within the catchment area of the complainant’s extraction well, which means that any spills or leaks from the biogas facility cannot affect the groundwater extracted by the appellant. Furthermore, the Board emphasized the fact that the appellant receives water from another water utility, which extracts water from a catchment area near the project area, does not constitute a sufficient connection to the project for the appellant to have a legal interest in the decision.”*

### **Case 21/00474 (Security Embankment at a Shooting Range Facility)**

The case concerned the establishment of a security embankment at a shooting range facility. The appellant lived approximately 1.35 km from the project, and the Board assessed that the safety embankment would not entail any environmental impact on the appellant, including noise. There were no special personal circumstances concerning the appellant in the case.

From the decision:

*“The Environment and Food Board of Appeal finds that the appellant is not affected to an extent that the appellant has a legal interest in the outcome of the case, and therefore the appellant does not have standing pursuant to Section 50(1) of the Danish Environmental Impact Assessment Act. The Board has thereby placed emphasis on the fact that there is approximately 1,350 meters between the appellant’s property northeast of the shooting range facility and the security embankment, and that the security embankment is located south of the facility. Furthermore, the Board has emphasized that there is no information that states that the project is expected to have an environmental impact on the appellant’s property, including in relation to noise.”*

### **Case 21/09871 (Climate Adaptation Facility)**

The case concerned a major climate adaptation project consisting of three structures and a sluice. The appellant lived approximately 1 km from the nearest structure in the project, and had, among other things, referred to the fact that as a citizen of the municipality in question, the complainant would end up paying for the climate adaptation project. The Board assessed that there would be no environmental impact on the complainant's property and that the interest in not contributing financially as a citizen was of such a general and political nature that the appellant did not have standing. There were no particular personal circumstances concerning the appellant in the case.

From the decision:

*“The Environment and Food Board of Appeal finds that the appellant does not have standing in this case. The Board placed emphasis on the fact that the appellant’s property is located approximately 1 km from the nearest structure included in the project and that there is no information in connection with the appellant that the project is expected to have any environmental impact on the property of the appellant. The Board also assessed that the appellant’s interest as a citizen of Holstebro Municipality not to contribute to the project’s financing through the collection of consumption charges for water and wastewater or as a taxpayer has such a general and political nature that there is not a sufficient interest under the Danish Environmental Impact Assessment Act. This also applies to the interests of the appellant in the project as a user of the municipality’s nature.”*

Another appeal concerning the same project was deemed admissible. The appellant was the nationwide association, the Danish Society for Nature Conservation (21/10121). The Board annulled the permit and remitted it for reconsideration due to insufficient consideration of the impact on Annex IV species and water bodies, cf. the national implementation of the Habitats Directive and the Water Framework Directive.

### **Case 22/07412 (Establishment of Nature National Park)**

The case concerned the establishment of a nature national park on state-owned land. The appellant lived approximately 6 km from the project area. The Board considered that the project would not have any environmental impact on the appellant. There were no particular personal circumstances concerning the appellant in the case.

From the decision:

*“The Environment and Food Board of Appeal finds that the appellant does not have the necessary legal interest in the outcome of the case to be granted standing. The Board placed emphasis on the fact that the appellant’s property is located approximately 6 km from the boundary of the Gribskov Nature National Park, and that there is no information in the appeal case that the project is expected to have any environmental impact to the property of the appellant.”*

There were two other appellants who complained about the project. The two appeals were deemed admissible as the appellants in these cases were considered to have standing (22/07411, 22/07413). The appellants were, respectively, a nationwide association and a group of neighbouring residents, of which the nearest lived approximately 150 m from the project area with a minor railway and scattered vegetation in between. The Board did not uphold the appeal itself.

### **Case 18/05034 (Bagsværd Rowing Stadium II)**

The case concerned an upgrade of the rowing stadium on Bagsværd Lake. The appellant was The Danish Society for Nature Conservation, which was considered to have standing. The board revoked the decision as it was no longer relevant, due to the lack of possibility to obtain exemptions from the conservation measures, which include Bagsværd Lake, to establish the requested project.

This case concerned a subsequent decision of 12 December 2017 regarding a new project under the Danish Environmental Impact Assessment Act on ‘Rowing Stadium on Bagsværd Sø II’, and is not an appeal of the same decision that the Nature and Environment Board of Appeal rejected on 30 September 2015 (NMK-34-00494).