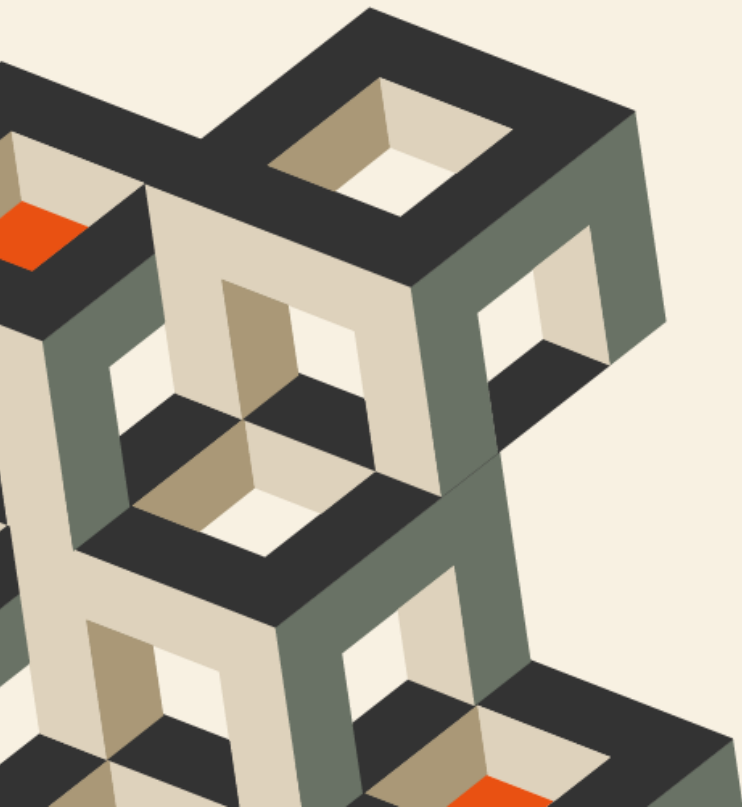




Landmark Chambers

Planning High Court Challenges 2025 - Session 3: Substantive law

Monday 24 November 2025



Your speakers for today:



Melissa Murphy KC (Chair)

The sequential test in recent Court cases
(flooding and retail)



Richard Turney KC

Planning Act 2008 case-law update



Matthew Henderson

Latest NPPF case-law: Part 1



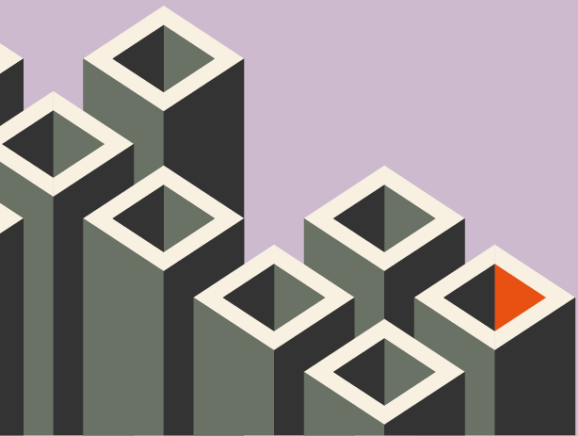
Nick Grant

The new protected landscapes duty:
case-law round-up



Joel Semakula

Latest NPPF case-law: Part 2



Latest NPPF case-law: Part 1



Matthew Henderson



Cases to discuss

- *C. G. Fry & Son Limited v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35
- *Mead Realisations Ltd v Secretary of State for Levelling Up, Housing and Communities* [2025] EWCA Civ 32
- *Dorchester Living Limited v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 3223 (Admin)
- *Edith Weston Parish Council v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 2908 (Admin)



C. G. Fry [2025] UKSC 35

- NPPF paragraph 194:

‘The following should be given the same protection as habitats sites:

- a) potential Special Protection Areas and possible Special Areas of Conservation;
- b) listed or proposed Ramsar sites; and
- c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.’

Mead Realisations [2025] EWCA Civ 32

- NPPF paragraph 174:

‘[...] Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. [...]

- PPG paragraph 7-028-20220825 - ‘What is a reasonably available site?’

‘Sites should be considered ‘reasonably available’ for the purposes of the sequential test if their location is suitable for the type of development proposed, they are able to meet the same development needs and they have a reasonable prospect of being developed at the same time as the proposal.

In considering whether alternative lower-risk sites (which could, where relevant, be a series of two or more smaller sites) would be capable of accommodating the proposed development, such alternative sites do not need to be owned by the applicant to be considered ‘reasonably available’.



Dorchester Living [2024] EWHC 3223 (Admin)

- NPPF paragraph 78:

‘Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies [fn. 38], or against their local housing need where the strategic policies are more than five years old [fn. 39].’

- Footnote 39:

‘Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning practice guidance.’



Edith Weston PC [2025] EWHC 2908 (Admin)

- NPPF paragraph 14:

‘In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:

a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and

b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 69-70).

Latest NPPF case-law: Part 2



Joel Semakula



Cases to discuss

- *Mole Valley DC v Secretary of State* [2025] EWHC 2127 (Admin)
- *R (Save Wimbledon Park Ltd) v Mayor of London* [2025] EWHC 1856 (Admin)
- *R (Stoke Mandeville PC) v Buckinghamshire Council* [2025] EWHC 1213 (Admin)
- *R (Hilltop Experiences Ltd) v Norfolk CC* [2025] EWHC 1447 (Admin)
- *R (Ticehurst PC) v Rother DC* [2024] EWHC 3069 (Admin)



Mole Valley DC v Secretary of State [2025] EWHC 2127 (Admin), per Choudhury J

- Key issue: whether, pursuant to the 2024 NPPF (particularly paragraphs 142, 153, 155 and footnote 55), the Inspector had erred in law in concluding that the aim of Green Belt openness cannot be compromised by development that is “not inappropriate”.
- Court held applying *Lee Valley*. if it’s not inappropriate, it’s not harmful to openness as a matter of policy: at [42] – [46]
- C’s interpretation of the policy would undermine purpose of new exception for grey belt development as set out in para 155 of the NPPF
- 20 October 2025 – permission to cite: see Practice Direction (Citation of Authorities) [2001] 1 WLR 1001



R (Save Wimbledon Park Ltd) v Mayor of London [2025] EWHC 1856 (Admin), Saini J

- Ground 2 (NPPF 202) – C contended that historic land management choices (notably the lawful golf course use and planting regime) amounted to “deliberate neglect” or “damage” to the Grade II* Registered Park and Garden, so the deteriorated state should not count against the heritage balance under paragraph 202.
- Court held paragraph 202 considered and not engaged
- “Deliberate” requires a conscious decision to neglect or damage (*Meyrick*) and the policy’s purpose (as reflected in PPG) is to deter owners from running down assets to secure permission: at [69]
- Lawful, long-standing land use that incidentally erodes significance is not “deliberate” neglect/damage.
- Absent evidence (including from Historic England) of intentional harm, decision-makers need not discount the asset’s condition under paragraph 202: at [74]



R (Save Wimbledon Park Ltd) v Mayor of London [2025] EWHC 1856 (Admin), Saini J

- Ground 3 (NPPF 103) –SWP argued paragraph 103’s exceptions should be read through the lens of community health and access, contending they do not accommodate “commercial” stadia and that the decision failed to address quantitative losses of open space, focusing instead on qualitative gains.
- Court confirmed a straightforward reading: exceptions in paragraph 103 are disjunctive (*Loader*); there is no textual exclusion of commercial sports provision; and “alternative sports and recreational provision” can be satisfied by schemes substantially for sport/recreation, assessed holistically.
- Under paragraph 103(b), both quantity and quality are relevant and may be set off in the round (Brommell).



R (Stoke Mandeville PC) v Buckinghamshire Council [2025] EWHC 1213 (Admin), per Lieven J

- C contended that the OR report misinterpreted “existing” in the development plan’s sports policy and NPPF paragraph 103, by imposing a rigid requirement that facilities be “currently” or “quite recently” in use or easily reopened
- The Council resisted, characterising the issue as one of application and not interpretation and relying on elapsed time since use ceased.
- Court a there had material misdirection as to the interpretation of policy: “existing” does not mean subsisting use or easy reactivation: at [35]
- NPPF paragraph 103(c) expressly recognises “former use”, confirming that a facility can still be “existing” in policy terms despite a cessation of active use.
- The officer’s rigid test was legally erroneous and seriously misled members; Ground 1 was allowed.



R (Hilltop Experiences Ltd) v Norfolk CC [2025] EWHC 1447 (Admin), per Lieven J

- Paragraph 183 of the NPPF 2023* stated:

"183. When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development (footnote 64) other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- *a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- *b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- *c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."*



* In the NPPF 2024, this is now paragraph 190, which replaces the term "Areas of Outstanding Natural Beauty" with the term "National Landscapes".

R (Hilltop Experiences Ltd) v Norfolk CC [2025] EWHC 1447 (Admin), per Lieven J

- C claimed that NCC failed to interpret and lawfully apply paras 182-183 of the NPPF in relation to development in the AONB.
- Court reaffirmed that whether a proposal is “major development” for paragraphs 182–183 is for the decision-maker, taking into account nature, scale, setting and potential for significant adverse impact.
- References in the OR to the scheme being “essential infrastructure” and to the nearby existing household waste recycling centre were irrelevant to that test but immaterial
- DMPO definition of “major” is not determinative for NPPF 182–183.
- Court endorsed that paragraph 183’s bullet points guide, but do not prescribe, the scope and methodology of assessing need, alternatives and harm (consistent with *Wealden*).



R (Ticehurst PC) v Rother DC
[2024] EWHC 3069 (Admin), per Tim Corner KC
(sitting as DHCJ)

- Court confirmed that an explicit step-by-step recital of paragraph 11(d)(i) and (ii) is not required if, in substance, the decision-maker considers the footnote 7 policies under limb (i), decides whether they give a clear reason for refusal, and (if not) proceeds to the tilted balance under limb (ii).
- Clarifies the approach to AONB policy in paragraph 182 as a footnote 7 policy: decision-makers must give “great weight” to conserving and enhancing landscape and scenic beauty
- But need not use that phrase if their reasoning shows it was applied; such harm can, as a matter of planning judgment, be outweighed by benefits: at [85]



Planning Act 2008 case-law update



Richard Turney KC



Planning Act 2008 case law update

- Key themes in the case law over the past year
- Likely future challenges
- Reform to infrastructure challenges



Key themes in the case law 2024-2025

Assessing and evaluating GHG emissions against policy tests

Although *Finch* has pronounced on what needs to be assessed, questions as to how the output of those assessments still give rise to legal challenge.

Fairness of infrastructure consenting is under the microscope

Increasing concern that the “pass is sold” by earlier policy decisions brings challenge risks further forward; and concerns about how the ministers actually reach their decisions.

The relationship between the PA 2008 and other regimes is under scrutiny

Where consents are sought for emerging/novel technologies, the “one stop shop” principle of the PA 2008 regime may give way to a more pragmatic approach; and in the specific case of solar development, questions remain about where the line lies between the PA 2008 regime and the TCPA 1990 regime.



GHG emissions in practice

R (Boswell) v SSESNZ [2025] EWCA Civ 669

- *Does “significant adverse effect” of new GHGs equate to a finding of incompatibility with net zero?*

R (Transport Action Network Ltd) v SST [2025] EWHC 1273 (Admin); R (Save Stonehenge) v SST [2025] PTSR 726

- *Can decisions about road projects rely as a matter of policy on the other sectoral decarbonisation proposals?*

R (Hynot Ltd) v SSESNZ [2025] EWHC 2644 (Admin)

- *How should emissions be approached on multi-phase schemes?*



Fairness under the microscope

R (Saferwaters Ltd) v SSEFRA [2025] EWHC 1885 (Admin)

- *Can the adoption of a Water Resources Management Plan proceed without a hearing or inquiry where scheme selection will be influential in development consent process?*

R (Save Stonehenge) v SST [2025] PTSR 726; R (Dawes) v SST [2024] PTSR 2033; R (Associated Petroleum Terminals (Immingham) Ltd) v SST [2025] EWHC 1992 (Admin)

- *What does fairness require when the Secretary of State is redetermining an application, or departing from the ExA on matters of weight to evidence? “Politics” and decisions.*



PA 2008 and other regimes

R (Associated Petroleum Terminals (Immingham) Ltd) v SST [2025] EWHC 1992 (Admin); R (Fordham) v SSESNZ [2024] EWHC 3553 (Admin)

- *The Gateshead principle and the “one stop shop”*

Ross v SSHCLG [2025] EWHC 1183 (Admin); Drayton Manor Farms Ltd v Stratford-Upon-Avon DC [2025] EWHC 775 (Admin)

- *“Overplanting” of solar; and additions/amendments to solar schemes in relation to the NSIP threshold and the role of the court*



Future challenges

- Review of Airports NPS
- GHG assessment in the context of human rights arguments: *Greenpeace Nordic* and the ICJ Advisory Opinion
- “Green on Green”: competing proposals in offshore space
- Strategic water resource proposals



Reforms to NSIP challenges

- Treasury-led concern about High Court challenge delays
- Failed Lords amendment to limit scope for such challenges
- Expedition
- Aarhus protections



The new protected landscapes duty: case-law round-up



Nick Grant



The change

Previous	Post LURA 2023
s. 85 CROW Act: (1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall <u>have regard to</u> the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.	S. 85 CROW Act: (A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must <u>seek to further</u> the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.



The change

Previous	Post LURA 2023
S. 11A NPACA (2) In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority <u>shall have regard to</u> the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.	S. 11A NPACA 1949 (1A) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must <u>seek to further the purposes</u> specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.



R (Ticehurst Parish Council) v Rother District Council **[2024] EWHC 3069 Admin**

- Challenge to mixed use development in AONB. Grounds of challenge included (1) interpretation/application of NPPF (2) reasons (3) procedural fairness.
- In course of argument about whether OR needed to set out NPPF/182:

“74. ...Section 85(A1) does not expressly state that great weight should be given to conservation and enhancement of the AONB. However, the duty under section 85(1A) to seek to further the purpose of conserving and enhancing the natural beauty of the AONB applies to the consideration of every planning application. If the section 85(1A) duty is performed in relation to a planning application, the authority will inevitably give great weight to conservation and enhancement of the AONB’s landscape and scenic beauty. Otherwise, I cannot see how the duty could be said to have been performed in relation to that application.”



New Forest NPA v SSHCLG **[2025] PTSR 1611**



New Forest NPA v SSHCLG [2025] PTSR 1611

- Grant of permission for extension to dwelling in New Forest NP.
- Inspector found no harm to character or scenic beauty.
- 2 Grounds: (1) misinterpretation of local policy, (2) failure to discharge enhanced duty in s. 11A(1A) (§§51-98).



New Forest NPA v SSHCLG [2025] PTSR 1611

How to approach “seek to further”

- Duty is strengthened (§58). But duty to “seek” to further purposes, not actually fulfill them (§62)
- Must consider (1) whether development is consistent with promotion of statutory purposes. (2) If development would undermine the purposes, consider whether, and explain why, permission should be granted (§§61-62).
- May need to consider e.g. size and scale of development, extent and severity of conflict, mitigation, compensation, and conditions (§63).



New Forest NPA v SSHCLG [2025] PTSR 1611

“Conserve and enhance”

- Conserve means “do no harm” (§77)
- “and” is disjunctive. Sufficient if proposal does no harm to the purposes (§79, 86, 87)
- Decision maker does not also have to determine if it would enhance (§82)
- Do need to consider both purposes (§§86-87).



New Forest NPA v SSHCLG [2025] PTSR 1611

How will court act on review?

- Whether duty discharged a qn of substance not form. Not fatal if no express reference (§69).
- Look at the reasons given and whether they disclose substantial doubt about whether duty performed (§70). For challenger to show a substantial doubt (§71).

In that case

- Even though inspector made no reference to test, on the facts and looking at his reasoning, it was discharged (§§91-92)
- Inspector had carefully considered whether proposal would conserve natural beauty. Although he did not also look at second purpose, did not need to as no party's case that there would be harm (§93).



R (CPRE Kent) v SSHCLG **[2025] EWHC 1781 (Admin)**



R (CPRE Kent) v SSHCLG [2025] EWHC 1781 (Admin)

- Development of 165 homes at Cranbrook in Kent, within High Weald AONB.
- SSHCLG accepted some harm to landscape and scenic beauty of AONB, but granted permission.
- Two Grounds: (1) the s. 85(A1) duty required the SSHCLG to refuse permission, (2) reasons.
- Ground 1 rejected. Correct approach in *New Forest*. S. 85(A1) duty not intended to displace or cut across ordinary evaluative duty when granting PP (§§47-63).
- Ground 2 rejected. Standard is *South Bucks*, reasons satisfactory (§§68-76).



Wadhurst PC v SSHCLG [2025] EWHC 1735 (Admin)



Wadhurst PC v SSHCLG [2025] EWHC 1735 (Admin)

- Two planning permissions for MCOU of land at Bewl Water to camp site and erect yurts
- Two Grounds (1) failed to ask himself the right s. 85(A1) duty questions and (2) failed to have proper regard to HW AONB Management Plan.
- Ground 1 rejected. Inspector had undertaken detailed examination of policy looking at whether the proposals conserved and enhanced AONB. He concluded compliance with particular local plan policies which indicated he concluded there would be conservation and enhancement of AONB (§§72-73).



Friends of the Lake District v Lake District NPA **[2025] EWHC 2630 (Admin)**



Friends of the Lake District v Lake District NPA [2025] EWHC 2630 (Admin)

- JR of decision to grant PP for using slate caverns in Elterwater Quarry for heritage tourism.
- Ground 1: Duty vitiated by legally erroneous approach to the *Sandford* principle advised by a senior member of Committee.
- Ground 1A: Defendant erred in law in its interpretation and application of the *Sandford* principle



Friends of the Lake District v Lake District NPA [2025] EWHC 2630 (Admin)

Sandford Principle

- National Parks purposes set out in s. 5 NPACA 1949:
 - (a) Conserve and enhance natural beauty, wildlife and cultural heritage
 - (b) Promote opportunities for understanding and enjoyment of special qualities by the public
- S. 11(1A):
- “(1A) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.”



Friends of the Lake District v Lake District NPA [2025] EWHC 2630 (Admin)

Sandford Principle

- *R (Stubbs) v Lake District NPA* [2021] PTSR 261 at §39-40: principle comes into play where not possible to treat both purposes equally and not possible to satisfactorily accommodate both purposes through management or stewardship. Broad duty, dependent on value of judgment of LPA.



Friends of the Lake District v Lake District NPA [2025] EWHC 2630 (Admin)

Ground 1

- Officer had advised some degree of harm to cultural heritage.
- Committee member had said that, arguably, opening the site enhanced cultural heritage as it introduces visitors to an aspect of the Lake District's heritage often underplayed: its industrial heritage (§§70-71).
- C argue that conflated the purposes, promotion of public access and promotion of better understanding went to second purpose, not the first (§§72-73).
- Claim dismissed. In context of discussion where *Sandford* principle correctly outlined, the comments were simply intended to indicate that any degree of conflict with first purpose should not be overstated, as it was arguable there was a degree of harmony between them. That was lawful (§§79-80).



Friends of the Lake District v Lake District NPA [2025] EWHC 2630 (Admin)

Ground 1A

- OR had concluded low level harm to cultural heritage by changing perceptual character of quarry as feature of LDNP heritage. So concluded it would not further the first purpose. OR also found that it would further second stat purpose by offering public access to a heritage asset. But applying greater weight to first purpose, and great weight to conserving heritage assets, still found harm would be outweighed by benefits.
- C argued first purpose had to always be given preference over the second, so misapplied *Sandford*.
- Court dismissed: *Sandford* principle requires applying greater weight to first purpose, it does not mean it must always prevail (§98).



The sequential test in recent Court cases (flooding and retail)



Melissa Murphy KC



*A raindrop from
the roof*

Fell in my beer

(Jack Kerouac, haiku)



Policy change

- NPPF Dec 2024 – sequential test requirement for “any form of flooding”; clearer on exception:

175. The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).



Policy not changed

NPPF (was 166, presently 174):

“development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding...”

(A policy directing refusal)



Guidance change

- Updates to paras. 23, 27 & 28, new 27a.
- Re surface water – where development “safe” “without increasing risks elsewhere”, no sequential test needed.
- Search parameters more clearly defined. A “reasonably available” site must “be able to meet the same development needs”.



Guidance change

The absence of a 5-year housing land supply is not a relevant consideration in applying the sequential test for individual applications. However, housing considerations, including housing land supply, may be relevant in the planning balance, alongside the outcome of the sequential test.

See also [advice on who is responsible for deciding whether an application passes the Sequential Test](#) and further advice on the Sequential Test process available from the [Environment Agency](#) (flood risk standing advice).

Paragraph: 027 Reference ID: 7-027-20220825

Revision date: 17 09 2025



*Through the town's
centre*

*A little stream flows,
bordered*

By weeping willows.

(Masaoka Shiki, haiku)



NPPF/95 (content unchanged):

93.95. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 94, it should be refused.

(A policy directing refusal)



- Policies directing refusal
- Need for the sequential test to be applied
- Applying the test



Policies directing refusal

R. (West Berkshire DC & another) v. Secretary of State
[2016] EWCA Civ 441

§21 “a policy maker is entitled to express his opinion in unqualified terms... but the law by no means demands that a public policy should incorporate exceptions as part of itself. The rule against fettering and the provisions of sections 38(6) and 70(2) are not, of course, part of any administrative policy. They are requirements which the law imposes upon the application of policy.”



Policies directing refusal ctd

R. (Asda Stores Limited) v. Leeds CC [2021] PTSR 1382

“where an application fails to satisfy the sequential test, it should be refused...”

- Whenever a decision maker finds breach of the policy, this will count as a negative factor with the force of government policy behind it. “It will go against the proposal as a material consideration” (§41).



Policies directing refusal ctd

Gladman Developments Limited v. Secretary of State (forthcoming)

- Flood risk case.
- Point taken by C based on Asda – failure of the sequential test = a material consideration & refusal cannot be mandated by policy.



Need for the sequential test

- Substation Action v. Secretary of State [2024] EWCA Civ 12.
- Note: pre policy change re surface water.
- Court found at §44 that EN1 did not require ST in relation to surface water flooding risk.
- Rather, decision-maker must be satisfied as a matter of planning judgment that a sequential approach has been taken.



Need for the sequential test ctd

- Same approach taken in Wathen-Fayed v. Secretary of State [2024 EWCA Civ 507 for essentially the same reasons.



Application of the sequential test

Retail

- R (On the application of Tesco Stores) v. Stockport MBC [2025] EWCA Civ 610
- Issue was the meaning of “available” in “only if suitable sites not available” in NPPF retail policy.
- Tesco argued: this did not mean available to e.g. Lidl. Meant available for the type of retail use for which permission was sought.
- Court agreed at §53 & referred to Lord Reed’s judgment in *Tesco v. Dundee* – “for the development proposed by the applicant”.



Application of the sequential test ctd

Note alignment of Sept 2025 version of flood risk PPG re “available” sites & most recent case law on “available” in retail context.



Take aways

- Flood risk – changes to PPG
 1. Bring us back to the position as at Substation Action/Wathen-Fayed (where there was no requirement for ST in relation to surface water flood risk).
 2. Align meaning of “available”.
- Failure of the ST is one material consideration among others.



Thanks for listening.

Melissa Murphy KC

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Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section, which can be found along the top or bottom of your screen.





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