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webinar

‘Planning Case Law in 2023: a recap’



Your speakers today are...



Matthew Fraser



Rebecca Sage



Armstrong v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 176 (Admin)

An inspector had erred in refusing to grant an application under s.73 TCPA 1990 the effect of which would be to allow a modernist style dwelling to be replaced with an alpine lodge style dwelling. There was no conflict with the operative part of the permission, and that was the only limit on the scope of s.73. There was nothing in s.73 which limited an application to “minor material amendments” or amendments which did not involve a “substantial” or “fundamental” variation.



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***R. (Fiske) v Test Valley BC* [2023] EWHC 2221 (Admin)**

S. 73 TCPA 1990 could not be used to introduce a condition which created any conflict or inconsistency with the original permission – there was no need for that conflict/inconsistency to be fundamental. A permission purportedly granted under s.73 which effectively removed a substation from a solar farm development was *ultra vires* on that basis. There was a further restriction that, where there is no conflict, a s.73 permission cannot amount to a fundamental alteration of the original permission.



R (Ashchurch Rural Parish Council) v Tewksbury BC [2023] EWCA Civ 101

In only assessing the environmental effects of a proposed bridge over a railway, rather than also assessing the effects of the wider scheme for a new garden town, the local authority unlawfully “salami-sliced” the “project” for the purposes of Environmental Impact Assessment.



Caldwell v Secretary of State for Levelling up, Housing and Communities [2023] EWHC 2053 (Admin)

An enforcement notice requiring cessation of land for residential use and removal of the dwelling (which was completed more than 4 years prior) was quashed. The principle in *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC* [1980] 40 P&CR 254 had its limits. It did not apply where the operational development was the source of or fundamental to an unauthorised change of use.

See also *Devine v Secretary of State for Levelling Up Housing and Communities* [2023] EWCA Civ 601



C G Fry and Son Ltd v SSLUHC [2023] EWHC 1622 (Admin)

The legal duty under reg. 63 of the Conservation of Habitats and Species Regulations 2017 to carry out an “appropriate assessment” where a project is likely to have a significant effect on a European protected site applies not only at the “outline stage” but also at the reserved matters stage or in the discharge of pre-commencement conditions.



R. (The University Hospitals of Leicester NHS Trust) v Harborough DC [2023] EWHC 263 (Admin)

An NHS Trust was not entitled to a financial contribution to health care services under a s.106 agreement for a mixed-use development including up to 2,750 homes. Its request did not satisfy the necessity test in reg 122 of the CIL Regulations as the Trust had failed to satisfy the local planning authority that population growth is not, or could not be, taken into account in its annual funding such that a “funding gap” would arise from the grant of permission.

See also: *R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills District Council* [2023] EWHC 1995 (Admin)



R (Fiske) v Test Valley BC [2023] EWCA Civ 1495

The incompatibility of an earlier permission with a later planning application is not “so obviously material” as to require consideration in determining the later planning application. It is not the authority’s job to anticipate how a developer may later choose to deal with such inconsistency. That is instead a matter for the developer.



Telford and Wrekin Council v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 2439 (Admin)

A claim which was filed within the 6-week period required by s.288(4B) TCPA 1990, but issued and served following expiry of that period, was out of time. The effect of para 4.11 of PD54D was clear: section 288 applications must be filed and served within 6-week period required by section 288(4B) TCPA 1990.

See also: *Halton BC v Secretary of State for Levelling Up, Housing And Communities* [2023] EWHC 293 (Admin)



Supreme Court cases

- *R (Day) v Shropshire Council* [2023] UKSC 8 – requirement for local authority to comply with procedural requirements concerning land subject to statutory trust in order to extinguish rights over the land; existence of the trust was a material consideration in planning decision
- *Secretary of State for Transport v Curzon Park Ltd* [2023] UKSC 30- taking into account other CAAD applications/decisions when determining CAAD application for the same underlying scheme
- *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47 – court has power to grant newcomer injunctions in specific circumstances



Other cases to note (1)

- AONB policy: *Persimmon Homes (Thames Valley) Ltd v Worthing Borough Council* [2023] EWCA Civ 762 & *Protect Dunsfold Ltd v Secretary of State for Levelling Up Housing and Communities* [2023] EWHC 1854 (Admin)
- Hillside: *R (Dennis) v London Borough of Southwark* [2024] EWHC 57 (Admin)
- Asylum accommodation: *Braintree DC v SSHD* [2023] EWHC 1076 (KB), *Braintree DC v SSHD* [2023] EWCA Civ 727 (KB), *R (Clarke-Holland) v SSHD* [2023] EWHC 3140 (Admin), and *R (Parkes) v SSHD* [2023] EWHC 2580
- Decision-making procedure: *SSLUHC v Smith* [2023] EWCA Civ 514 & *R. (Spitalfields Historic Building Trust) Tower Hamlets LBC* [2023] EWCA Civ 917



Other cases to note (2)

- Carbon emissions & airports: *Bristol Airport Action Network Co-ordinating Committee v SSLUHC* [2023] EWHC 171 (Admin) & *R. (Dawes) v SST* [2023] EWHC 2352 (Admin)
- Heritage harm: *East Quayside 12 LLP v Newcastle Upon Tyne CC* [2023] EWCA Civ 359
- Development Consent Order challenges: *R. (Together against Sizewell C Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1526 (Admin); *R. (Suffolk Energy Action Solutions SPV Ltd) v Secretary of State for Energy Security and Net Zero* [2023] EWHC 1796 (Admin); *Durham County Council v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 1394 (Admin)
- GPDO and prior approval: *Cab Housing Ltd v SSLUHC* [2023] EWCA Civ 194



Cases to watch in 2024





- Finch v Surrey CC – Supreme Court decision awaited
- Marks & Spencer – challenge to SoS called-in decision – hearing listed in Feb 2024
- CG Fry – appeal to CA – hearing listed in March 2024
- Caldwell – appeal to CA – hearing listed in March 2024
- Home Office asylum accommodation – Clarke-Holland v SSHD in CA, second Parkes claim



Thank you

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