



Landmark Chambers

Planning High Court Challenges 2025 webinar series - Session 2: Practice and Procedure

Monday 17 November 2025



Your speakers for today:



James Maurici KC (Chair)



Alex Goodman KC

Climate change litigation update,
including the Rights Community
Action appeal



Dr Ashley Bowes

Round-up of rights of way and village
green case law



Siân McGibbon

Aarhus costs cases: Global
Feedback and other cases



Ben Fullbrook

The weight to be given to the views
of statutory consultees: where does
the case-law now stand?

Aarhus costs cases: Global Feedback and other cases



Siân McGibbon



HM Treasury v. Global Feedback [2025] EWCA Civ 624

Key takeaway: Article 9(3) of the Convention applies only to contraventions of legal provisions which concern the protection and regulation of the environment.

- A judicial review brought by Global Feedback Ltd against the Treasury and BEIS against a decision to make regulations giving effect to a Free Trade Agreement with Australia which would lead to increased beef imports and increase carbon emissions.
- Lang J found the claim should benefit from Aarhus protection, the Treasury / BEIS appealed successfully.
- Key principles from the Court of Appeal :
 - *"It would be wrong for a judge to simply ask whether a claim or ground of challenge is to do with the protection of the environment or with the effect of a decision or legal provision on the environment..."*
 - *"Put in a nutshell, what matters is whether the purpose of the national law that has allegedly been contravened is to protect or regulate the environment, not, whether the decision being challenged has an effect on, or some connection with, the environment..."*



R v. Hallam and Others [2025] EWCA Civ 624

Key Takeaway: Aarhus Convention rights not a relevant consideration in sentencing environmental protesters.

- Application of the Aarhus Convention in an appeal against sentence by protesters.
- The Appellants argued that the Aarhus Convention was an aid to interpreting ECHR rights and should be taken into consideration in sentencing. The Court of Appeal found that the Appellants were not penalised for “exercising their rights in conformity with the provisions of” the Convention but for criminal offences.
- *“The Aarhus Convention is not incorporated into English law. That is sufficient, in itself, to decide the point. However, we also agree with the Crown’s submission that article 3(8) of the Aarhus Convention did not apply to the appellant’s activities...”*
- *“It is, rightly, not suggested that their prosecution or conviction was contrary to the Aarhus Convention. Neither was their sentencing”.*
- *Shell UK Ltd v. Persons Unknown* [2024] EWHC 3130 (KB)...?



R (The Badger Trust) v. Natural England [2025] EWHC 2761 (Admin)

Key takeaway: Even in an application to vary the cost cap the default figures remain the ‘default’ or ‘general’ starting point (“...[a] variation decision does not start with a clean sheet, as if the [default caps] did not exist or their levels were unknown”. A “clear demonstration would be needed for a variation”.

- An unsuccessful application by Natural England to increase the cost cap in a judicial review brought by the Badger Trust to issue / renew badger cull licences.
- Fordham J was unimpressed, holding that the default caps reflect the importance of access to environmental justice; the chilling effect of flexibility; and the need to minimize satellite litigation.
- *“Natural England has subjected the Claimants’ accounts and reserves policies, arrangements for legal teams, and arrangements for fundraising to close scrutiny...I can see how the mechanism of the Rule 27 Variation allows for that exercise to be invited... But ...I was left feeling that it would not be a good thing for access to to environmental justice if this sort of exercise were to become an established feature; still less a new norm”.*



Green Lane Association v. Central Bedfordshire **[2025] EWHC 2251 (Admin)**

TLDR: Article 9(3) of the Convention applies only to contraventions of legal provisions which concern the protection and regulation of the environment.

- Green Lane Association sought judicial review of an experimental Traffic Regulation Order
- The Council applied (after having filed Acknowledgement of Service) for a declaration that the claim was not an Aarhus Convention claim (following *Global Feedback*), alternatively that the cost cap should be increased to £35,000.
- The relevant provisions did have “the aim of protection and regulation of the environment” when read as whole and having regard to the “wording and aims of the legislation”.
- The late application was subject to the relief from sanctions test; even where relatively made early in proceedings, lack of prejudice to the claimant was immaterial.



Planning High Court Challenges: practice and procedure case-law round-up



James Maurici KC



Introduction

Covering practice and procedure (excluding Aarhus costs):

- (1) Permission issues;
- (2) Delay and extensions of time;
- (3) Filing/Service failures;
- (4) Costs;
- (5) Interim relief;
- (6) Transfer;
- (7) Other procedural matters.



(1) Big year for permission issues ...

4 cases to consider:

(1) *Ramdass v Minister of Finance* [2025] UKPC 4 – the test for permission

(2) *R (Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 173 (Admin) – when to order a rolled-up hearing

(3) *R (Ammori) v SSHD* [2025] EWCA Civ 1311 and [2025] EWHC 2013 (Admin) – determining preliminary issues at the permission stage and appeals therefrom.

(4) *R (BC) v Surrey CC* [2025] EWCA Civ 719 – extension of time appeals at permission stage.



Ramdass

Privy Council decision on appeal from Trinidad & Tobago (Lord Hodge, Sales and Stephens and Lady Rose and Simler), at [5] “[t]he threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow”

29. As is well-established, in deciding whether to grant leave to apply for judicial review, the court is concerned only to examine whether an applicant has an arguable ground for judicial review with a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in *Sharma v Brown-Antoine* [2006] UKPC 57; [2007] 1 WLR 780, para 14.

30. This is a low threshold. The leave stage is, after all, designed to protect public bodies against weak and vexatious claims. It is not designed for lengthy inter partes hearings but to enable a judge to decide whether a case is arguable on a relatively quick consideration of the material available: see *R v Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 644A, per Lord Diplock. Nor, in the Board’s view, is it intended to afford an opportunity to a public body, such as the Minister, to resist full consideration of matters that are likely to be of importance both to the public and the executive itself.

31. As the Board explained in *Attorney General v Ayers-Caesar* [2019] UKPC 44 at para 2, although wider questions of the public interest may have some bearing on whether leave should be granted, “if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage”.



- There is no ability by a D to appeal the grant of permission, and it can only really be set aside if there has not been service on the D: see Fordham at 21.1.28 and 23.1.4.
- So, where there is a fundamental issue that falls to be determined at the permission stage, and which cannot be, or it would not be sensible for it to be re-opened, at the substantive stage (e.g., because if alternative remedy point a good one D should not have to defend substantively).
- Chamberlain J. again at para. 15 “[w]here a defendant raises a point in opposition to a judicial review claim, which if decided in the defendant's favour would be fatal to the claim, and the point may well arise in other cases, it may be appropriate for the court to determine the point as a preliminary issue. For a recent example, see *R (Campbell) v Attorney General* [2025] EWHC 1653 (Admin)”.
- The determination of a preliminary issue can be appealed, unlike the grant of permission.



Al Haq – rolled up hearings (1)

Rolled-up hearings commonly used in Planning cases. *Al Haq* Chamberlain J. decision – in a non-planning context. In deciding whether to order a rolled-up hearing, the court had to balance a number of factors, typically including:

- (1) The importance of a quick, final decision: *“judicial review claims are in general dealt with relatively quickly, even without special directions for expedition. However, there may be cases where there are good reasons for the claim to be determined even more quickly. The case for expedition may be particularly strong where the claim raises issues of public importance”*
- (2) Would a rolled-up hearing be likely to result in a final decision more quickly than a separate permission stage? *“In most cases, permission can be considered on the papers relatively quickly and, if permission is refused, a permission hearing listed relatively quickly after that; by contrast a rolled-up hearing will generally take longer to prepare for and list. If there is a prospect that permission may be refused on all grounds, a separate permission stage may result in a final decision more quickly than a rolled-up hearing. But in some cases, it is apparent at a relatively early stage that there is a reasonable prospect of permission being granted on one or more grounds. A permission stage might result in permission being granted on some points and not others, with the possibility of an appeal ...”* and so delay



Al Haq – rolled up hearings (2)

(3) Would a rolled-up hearing be substantially longer than a permission hearing? *“In most cases, a permission hearing with a time estimate of 30 minutes or 1 hour will be much less burdensome for the defendant (and will use considerably less of the court's resources) than a rolled-up hearing. However, in some exceptional cases, the difference will be less pronounced. In some cases, it may be obvious that, even if there were to be a separate permission stage, any permission hearing would have to be listed for substantially longer than 30 minutes or 1 hour. In complex cases, permission hearings listed for one day or more are not unknown. This may not be much less than the time estimate for a rolled-up hearing.”*

(4) Would a rolled-up hearing impose a greater burden on D? How much greater? *“In most cases, the burden imposed on a defendant at the permission stage is relatively modest (where summary grounds are sometimes very concise and evidence is not generally expected), whereas that imposed at the substantive stage is greater. But in some cases, particularly those turning on pure points of law or where the matters requiring evidence are relatively limited in scope, the difference between what is required at a rolled-up hearing and what is required at the permission stage may be less pronounced.”*



- This was a housing case. Rolled-up hearing. The Judge below extended time for compliance with CPR 54.5 pursuant to CPR 3.1(2)(a), granted permission and allowed the claim.
- D appeals the decision to extend time.
- C argued that CPR 54.13 meant that D had *“no right to challenge the judge's decision to grant permission”*
- One issue with this was as Lewison LJ pointed out in granting permission to appeal was it would mean that *Gerber v Wiltshire CC* [2016] 1 WLR 2593 was wrongly decided. *Gerber* was a decision of the CA where the grant of an extension of time by the Judge (the issue having been reserved to the substantive hearing by the Judge granting permission) was the subject of a successful appeal. But see below re facts.
- CA says that CPR 54.13 has nothing to do with appeals (see [29], *“the rule is concerned with ensuring that if, for example, an extension of time was granted at the permission stage, the issue of whether the claim was brought in time cannot be revisited at the main hearing, although delay may still be potentially relevant to the relief granted”*).



BC (2)

- *“R.54.13 is not, and could not possibly be taken to be, a bar on a defendant appealing a judge's decision as to delay/extensions of time. If nothing else, such an interpretation of r.54.13 would mean that the rule was ultra vires because s.16 of the Senior Courts Act 1981 allows any party to appeal an order of the High Court to the Court of Appeal”*
- The interplay between the rules was explained by Stanley Buntton LJ in *R (MD) (Afghanistan) v SSHD* [2012] 1 W.L.R. 2422 at [16] – [17].
- *“... there is no authority in which any judge has said or suggested that an appeal against a decision in respect of r.54.5 could only succeed in a very plain case, or that a successful appeal on such a point would be rare. ... the test which this court must apply to the decision below involves neither labelling it a rare case or a very plain case for interference, but is instead the ... test identified at [21(8)] of Thornton Hall ...” ([32]).*
- That case (and *Gerber* at [61] and [62]) hold that a decision to extend time being a matter of discretion *“this court will not interfere with the first instance judge's decision unless it is flawed by a misdirection in law or by a failure to have regard to relevant considerations or the taking into account of considerations that are irrelevant, or the judge's conclusion is clearly wrong and beyond the scope of legitimate judgment “*



(2) Delay

Delay is always a big issue in Planning High Court cases, some interesting cases this year:

- (1) *R. (Hynot Ltd) v Secretary of State for Energy Security and Net Zero* [2025] EWHC 2644 (Admin)
- (2) *R (Amalgamated Smart Metering Ltd) v Rotherham Metropolitan Borough Council* [2025] 1 W.L.R. 3619 – extensions of time/disputing jurisdiction
- (3) *R (BC) v Surrey CC* [2025] EWCA Civ 719 - extensions of time
- (4) *R. (Wallis) v North Northamptonshire Council* [2024] EWHC 3076 (Admin) – if unaware of decision because of fault by decision-maker that may well be a good reason to extend time but not if you then delay having found out about it!
- (5) *Khan v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 969 (Admin) – s. 289 delay not excusable.



Hynot(1)

- JR of the decision of the Secretary of State, on 17 March 2025, to agree to the grant of consent under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 for the "HyNet Carbon Dioxide Transportation and Storage Project – Offshore", which comprises 3 geological gas storage sites in the Liverpool Bay Area
- JR lodged ([8]) *“three months (to the day) after the Decision and approximately eight weeks after it was published”*
- Debate over when time ran from. Decision taken 17/3/25, but only published on 24/4/25. This is because the SoS having decided, there then had to be a NSTA decision (made on 22/4/25) and both decisions published together on 24/4/25. Court says ([64]) *“time for bringing a claim for judicial review runs from the date upon which the legally operative decision was taken, not from the date upon which the claimant is informed of it, albeit that the latter date may be relevant to the question of whether the claim was filed promptly”*. Court rejected argument based on *Anufrijeva* [2004] 1 AC 604 that time only ran from 24/4/25



67. It is not in dispute that even where a claim is commenced within three months from the date of the decision challenged, it may be out of time if the Claimant did not bring proceedings promptly (British Gas at [137]). In my judgment, in filing its claim on 17 June 2025, the Claimant failed to act promptly on the facts of this case. The primary obligation on a claimant is to apply promptly - the three-month period is in the nature of a backstop, not a target. A claimant cannot wait until the three-month period is about to expire and then seek to bring proceedings at the end of that period and argue that it has acted promptly: R (Greenpeace) v Secretary of State for Trade and Industry [1998] Env LR 415 per Laws J at 442. That, however, is what the Claimant has sought to do in this case. It filed (“protectively” i.e. without any pleaded case, which followed on 4 July 2025) on the last day of the relevant three-month period because the Claimant saw this as the target. In my judgment, the subject matter of the Claimant’s claim demanded particularly prompt action. The Development involves major infrastructure. In England, underground gas storage facilities with a working capacity expected to be in excess of 43 million standard cubic metres are defined as Nationally Significant Infrastructure Projects under sections 14 and 17 of the Planning Act 2008. Such projects are subject to a requirement that they be challenged within 6 weeks of the relevant decision (see section 202 of the Planning Act 2008). Similarly, decisions under the Planning Acts must be challenged within six weeks under CPR 54.5(5). By virtue of the fact that it takes place within the UK’s territorial waters, the Development does not fall within the scope of the Planning Act 2008 or CPR 54.5(5). Rather it requires consent from the NSTA under the EIA Regulations. Nevertheless, those timescales are in my judgment indicative of the need to act with particular speed where the proposal is to challenge a decision granting consent for a major infrastructure project. This is a case where very substantial third-party interests are involved. The material before me shows that the Claimant’s conduct was dilatory throughout. Upon becoming aware, on 29 April, that a decision which it might wish to challenge had been taken on 17 March, the Claimant should have acted very speedily indeed to bring proceedings. That is not what happened. The Claimant failed to bring proceedings for another two months. Indeed, it did not send a letter before action for almost another three weeks, i.e. until 21 May 2025. And even after the Secretary of State sent an interim response to that letter on 28 May 2025, refusing to agree to the Claimant’s position on limitation and reserving his position on promptitude, the Claimant failed to file for almost a further six weeks, filing only at the very end of the three-month period.



Hynot (3)

- So the 6 week time limit for Planning Act claims and for 2008 Act claims not applicable, so this was a prompt and in any event within 3 months case.
- Remember *Uniplex* ?

69. For completeness, I should record that the Claimant argued that the CPR 54.5(1)(a) “*promptness*” requirement does not apply as the challenge involves EU-derived law and Uniplex (UK) Ltd C-406/08 [2010] 2 CMLR 47 was relied upon. In that case the CJEU found that the EU law general principles of effectiveness and certainty precluded a limitation provision based on “*promptness*”: [37]-[43]. The Claimant is not saved by this argument. The Retained EU Law (Revocation and Reform) Act 2023 has removed the principle of supremacy of EU law in domestic law and provides that no general principle of EU law is part of domestic law after 2023: s.5(A1) and (A4) of the European Union (Withdrawal) Act 2018. Therefore, I cannot disapply the “*promptness*” requirement in CPR 54.5(1)(a) on the basis of the EU law general principles of effectiveness and certainty. These principles do not apply.



Amalgamated Smart Metering

- JR of a PP. There is nothing in CPR Pt 54 which excludes the procedure for disputing the jurisdiction of the Court contained in CPR Pt 11 from operating in the context of a JR claim.
- However, the requirement for permission in JR means that the court is able to act as its own gatekeeper as to the exercise of its own jurisdiction, without (in general) there being any need for a party to make an application under CPR Pt 11.
- It is open to a D or IP who considers that permission should be refused for lack of jurisdiction to file an AoS, identifying those matters which it considers justify the refusal of permission. In particular, where a C has filed a planning Act JR outside the 6-week time limit in CPR 54.5(5), there is generally no need for D to apply under CPR Pt 11 if it wishes the court to refuse to grant C an extension of time under CPR 3.1(2)(a).
- The need to apply for an extension of time and obtain permission to apply for JR, provides (generally) a fully adequate procedure to allow the court to decide whether to extend time.



16. The court has the general power to extend time for compliance with r.54.5 pursuant to r.3.1(2)(a). However, in a judicial review context, the central importance of acting promptly at all times has been repeatedly restated: see for example *R v Institute of Chartered Accountants in England and Wales Ex Parte Andreou* [1996] 8 Admin LR 557. More recently, the judgment of Carr LJ (as she then was) in *R (Good Law Project Limited) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355; [2022] 1 WLR 2339 (“*Good Law*”) stressed at [39] the need for promptness: “Good public administration requires finality. Public authorities need to have certainty as to the validity of their decisions and actions”.
17. If the applicant is unaware of the decision that he or she subsequently wishes to challenge, that may amount to a good reason for delay, but that is on the proviso that the applicant acts expeditiously once they become aware of the decision: see *R v Secretary of State for the Home Department Ex Parte Ruddock* [1987] 1 WLR 1482 (“*Ruddock*”). But errors by the applicant’s lawyers will not generally amount to a good reason for delay: *R v Secretary of State for Health Ex Parte Furneaux* [1994] 2 All E.R. 652.
18. It is right to say that in recent times there has been a greater emphasis on the need to comply with the tight time limits in judicial review cases: the decision of this court in *Good Law* is a case in point. Although ultimately concerned with the subsequent service rather than the filing of a judicial review claim, the decision should make salutary reading for all those who need to comply with the short time limit imposed in judicial review cases.

- PPs granted in 2021 and 2022
- JR lodged 11 April 2024. C applies for an extension of time because, owing to an administrative error by the Council, which is the local planning authority, residents of Hooke Close were not sent consultation letters in 2021 or 2022 about the PPs.

131. In my judgment, the Claimant has a good reason for the initial delay in commencing proceedings because of the Council’s failure to send neighbour consultation letters to her. However, she has not demonstrated a good reason for her subsequent delay, after the ground works commenced in September 2023 and the Project Manager for IP1’s contractors began to write to the residents. A reasonable landowner would have checked the Council website for details of the proposed development, or asked the Project Manager for more information, by October 2023 at the latest. In this case, the Claimant failed to act with “the greatest possible celerity” (*Thornton Hall* at [21]). Even once the Claimant was aware of the details of the proposed development, she unreasonably delayed for nearly 3 months before filing her claim for judicial review.



- A s. 289 TCPA appeal must be made within 28 days of the decision (see CPR 54DPD 6.1).
- The decision of the Inspector was issued on 31 October 2024, and the deadline for making the application was therefore 28 November 2024.
- The notice of appeal was filed on 29 January 2025 (there having been an incorrect N461 claim filed on 6 January 2025).
- *"I apply the Denton principles [relief from sanctions], although in my judgment the better analysis is to apply the provisions of CPR 7.6(2) as that relates to the service of a claim form rather than compliance with a rule or order with respect to a step in the proceedings"*
- *Holds* the delay in bringing the application was both serious and significant and there was no valid excuse or explanation for delay.
- Also failed to serve SoS and to include various documents required under CPR ... leads me on to ...



(3) Service/Filing issues

- SSHCLG v Rogers [2025] 1 W.L.R. 2759
- SoS appeal against decision of HC to extend time for service.
- CPR 7.6 applied by analogy to applications to extend the 6-week period for service of a claim for a planning statutory review. Must show: (i) it had taken all reasonable steps to serve the claim form within the relevant period; and (ii) to show that the application had been made promptly. The principles on relief from sanctions, including the merits of the underlying case, were not relevant.
- CA holds time should not have been extended. The claim form had been filed with the court office in good time, he had failed to mention the time limit in communications with the court, or chase the issue of the claim form prior to expiry of the time limit. Further, C;s application for an extension of time, made 10 weeks after expiry of the 6-week time limit, had not been made promptly.
- Leading case now on extensions for failing to serve *within* the 6 weeks.



Service issues cont.

- *Herstmonceux Museum Ltd v SSHCLG* [2025] EWHC 1863 (Admin)
- Order sought under CPR 11.1 that the court has no jurisdiction to determine the claim for planning statutory review under section 288 TCPA 1990 , nor the appeal under section 289 TCPA 1990: NB see *Smart Metering* above not necessary to apply under CPR 11 in such cases.
- Judge found claim could only be pursued under s. 289 but considers s. 288 and 289 procedurally. And claim did not comply with CPR 54D requirements for s. 289 including it failed to serve within the 28 day time limit for such proceedings.
- Similarly failed to serve within 6 weeks the s. 288 proceedings.
- Judge holds that the applicant has not demonstrated that it took all reasonable steps to serve the claim form by the deadline, but had been unable to do so. The applicant could and should have discovered the service requirements, either through its own research or by seeking advice. The applicant also cannot show that he acted promptly in making the application for an extension of time.



Service issues cont.

- *R. (Heylen) v University of Cambridge* [2025] EWHC 510 (Admin) JR non planning. Court finds it lacked jurisdiction to hear a student's JR against a university in respect of its refusal to grant him an examination allowance, because the claim form had not been validly served.
- *R. (Scott) v Haringey LBC* [2025] 10 WLUK 565 – another JR non planning: a claim form which had not been signed or sealed had not been properly served on a local authority and was set aside where C had not applied for an extension of time for service. If the claim form had been validly served, the claim would have been dismissed on its merits.
- For JR, the claim form must be served within seven days of issue; for statutory review, the claim form must be filed and served within the six weeks provided for under Acts.
- NB the arguments against the strict approach to extensions in JR applying to statutory review are (despite many judicial rejections) cogent and compelling: see *Farnham Town Council v SSSLHC* [2025] P.T.S.R. 619 at [59] – [71] and one day I think the will prevail ...



***BLV*(1)**

- *R (BLV) v SSHD* [2025] EWHC 1475 (Admin): considering electronic filing pilot scheme under CPR PD510 para.2.3(c) and whether the filing date of the new claim could be backdated.
- On 6 February 2025, C's sols firm made an e-filing submission on the HMCTS website.
- On 11 and 12 February, C sols asked the court for the sealed claim form so that they could effect service on D.
- On 12 February, they received a "*failed accepted notification*" pursuant to PD 510 para.5.4(5). That notification stated that the claimant had failed to list the D and had listed the name of the individual legal representative instead of C's sols firm.
- C's sols re-filed the permission bundle and requested the court to note the application as filed on 6 February for limitation purposes. On 25 February, it re-filed the papers again. On 5 March, it received email notification that "the filings" in the case had been accepted by the clerk on that date. Despite requests from C sols, the court declined to change the filing date.



BLV(2)

- Under C's sols argued that ccontended that there was no mandatory field in the online form requiring the entry of details relating to a D: PD510 para.2.3(c). Court disagreed: see [24]. Court also considers what needs entering re C sols details [25]-[26].
- C argued that had D raised any point on delay, C would have invited an order pursuant to PD 510 para.5.3(2) and CPR 3.10(b) that any errors made on filing the claim form might be remedied by directing that the claim be treated as "filed" on the date of attempted filing, notwithstanding the "failed acceptance" notification. Court rejected this and said would have extended time for the JR claim to take account of the circumstances: see [27]-[28]. It would have been unlikely to make the orders indicated without a D and any IP being on notice or giving them liberty to apply to discharge the order (ibid.) Requests to the court to change the court-recorded date of issue of a JR claim should not be unilateral [29]. In any situation where a party was encountering practical difficulties in its interaction with the court, it should explain the position to the other parties in order to demonstrate that it was doing all it reasonably could to progress the position and to minimise prejudice to all parties [30].



(4) Costs (non-Aarhus) (1)

1. CPR 44.6 added so that the judge who carries out the assessment need not be the same judge as the one who heard the application or trial. This overturns the decision of the Court of Appeal in *R (Isah) v SSHD* [2023] EWCA Civ 268.
2. *New Lottery Co Ltd v Gambling Commission* [2025] EWHC 1522 (TCC) - not a JR, but implications for JR. CPR Part 25 only allows security for costs (“sfc”) against a D not an IP. CPR 3.1(2)(p) did not empower the court to make an order for sfc in favour of an IP which would have the effect of circumventing the existing regime in CPR Pt 25. The court had an inherent jurisdiction to make orders for sfc, but that jurisdiction was constrained by the settled practice of the court, namely that sfc would only be awarded in favour of a D. If there was to be expansion of the CPR to cover applications for security for costs by IPs, that was a matter for the Rules Committee or Parliament.



(4) Costs (non-Aarhus) (2)

3. *R. (IX) v SSHD* [2025] UKUT 154 (IAC): When determining costs applications arising from public law claims in which a substantive hearing was no longer required, the broadly defined classes of case set out in *M v Croydon* [2012] 1 WLR 2607 were no more than guidance on how the general costs rule might apply in such circumstances; and were not to be applied slavishly. Tribunals were not required to take a special approach in situations where a claim had been compromised, nor were they precluded from considering relevant matters, including the merits of the claim if they were in a position to do so.



(5) Interim relief (1)

Key cases:

1. *Pompe v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 1489 (Admin) – useful reminder of principles for interim relief in public law.
2. *R. (Nobel Oil E&P North Sea Ltd) v Oil and Gas Authority (t/a North Sea Transition Authority)* [2025] EWHC 1280 (Admin) – is a cross-undertaking needed where interim relief sought is stay not injunction/ what is losses self-inflicted?

Other cases:

Ubiribo v Notting Hill Genesis [2025] EWHC 132 (KB) (Court refusing to grant pre-action interim relief in advance of an application for JR of a social housing provider's allocation decision)

I understand there was another injunction case this year: *Somani Hotels Ltd v Epping Forest DC* [2025] EWHC 2183 (KB) & [2025] EWCA Civ 1134 ... but not covering s. 187B injunctions.



(5) Interim relief (2)

- (1) Tests for interim relief in JR: *Pompe*
- (2) C sought continuation of an interim injunction prohibiting SoS from signing off any agreement with a foreign government in respect of the Chagos Islands.
- (3) Chamberlain J. provided a useful account of principles applicable.
- (4) Injunction discharged: (i) in considering the balance of convenience, it was also necessary to bear in mind in a public law context whether the public interest was served by the grant of interim relief; (ii) seeking interim relief that precluded the UK government from negotiating a treaty in the exercise of its prerogative powers. The relief sought itself directly impacted on an established principle of public law; (iii) 2-month delay also fatal to interim relief.



(5) Interim relief (3)

(2) Stays and cross-undertakings: Nobel

Application for stay of proceedings under CPR 54.10 to prevent the SoS issuing an approval under the Petroleum Act 1998 as advice to SoS by NSTA under challenge as being unlawful:

- (1) Jurisdiction: *“future parts of the process or the overall decision-making process”* can be subject of a stay. It also contemplates affecting IPs. This reflects the observations of Dyson LJ about a stay of a challenged planning permission which affects an IP, namely, the developer: see *R (H) v Ashworth Hospital Authority* [2003] 1 WLR 127 at [42]. *“As Nobel observed, in a planning context, it is permissible to challenge before permission has been granted and simply on the basis of a resolution to grant permission ... see ... Burkett ... A stay safeguards the integrity of the process governed by an interlocking statutory framework ...”*
- (2) Need for Cross-UT: expectation that there will be a cross-undertaking in damages if there is an IP who is affected by the proposed order. If losses self-inflicted that is relevant to whether cross-undertaking required but not decisive.



(6) Transfer

Lots of cases (as usual) of transfers where claims not commenced in Court of closest connection to the claim:

- (1) *R. (SK Enterprises (UK) Ltd) v SSHD* [2025] EWHC 237 (Admin)
- (2) *R. (Weis) v Revenue and Customs Commissioners* [2025] B.T.C. 4
- (3) *R. (AXN) v SHD* [2025] EWHC 608 (Admin)
- (4) *R. (Kenny-Levick) v Commissioner of Police of the Metropolis* [2025] EWHC 904 (Admin)

But NB *R. (Szczurkowski) v Director of Legal Aid Casework* [2025] EWHC 320 (Admin) – allowed to stay in London despite not closest connection because of the location of legal representatives, cost considerations, and the potential link with a similar claim and see similarly *R. (MIA) v SSHD* [2025] EWHC 598 (Admin)

These used to be all dealt with by Fordham J., now Hill J.



(7) Other procedural matters

1. Media access to skeletons: *R (Metropolitan Police Commissioner) v Police Misconduct Panel* [2025] EWHC 1462 (Admin) Fordham J provided guidance on the approach to be taken to the provision of skeleton arguments to the media at hearings;
2. Notification where issues of Parliamentary privilege arise: *R (National Council for Civil Liberties) v SSHD* [2025] Civ 571 sets out the procedure for notifying Parliamentary authorities where questions of Parliamentary privilege arise.
3. *Powell v SSHCLG* [2025] EWHC 377 (Admin): Pursuant to CPR PD 54D6.11 the respondents to the application before the Court are (1) the SoS, (2) the LPA, and (3) any other person having an interest in the land to which the notice relates. An objector Ms Sharma: status? Not an IP. No IPs in such proceedings (under s. 288 or s. 289). NB this old chestnut of an issue; no IPs under s. 288 and 289 (albeit often referred to as such) but there is power (often used in Part 8 proceedings under s. 288 or s. 113 of the 2004 Act) for Court to join as additional Ds even if not required to be served: see *IM Properties v Lichfield DC* [2015] EWHC 1982 (Admin) Holgate J. Not clear this was cited to Court.



(7) Other procedural matters cont.

4. Greenpeace Ltd v Advocate General for Scotland [2025] CSOH 10 | 2025 S.L.T. 303

- Scottish case dealing with fall-out of *Finch*. Issue: what was the appropriate remedy following successful petitions by two non-governmental organisations for judicial review of grants of consent by the Oil & Gas Authority in terms of the Offshore Oil and Gas Exploration, Production, Unloading and Storage (EIA) Regulations 2020 for two offshore oil and gas projects, and the agreement of the Secretary of State for Energy Security & Net Zero to those grants of consent.
- Concern the Jackdaw and Rosebank oil fields.
- The issue was whether the decisions should be: (i) reduced (quashed) and remade on a proper and lawful basis taking into account downstream emissions, or (ii) declarator should be granted such that the decisions stood, and the projects proceeded despite the decisions being unlawful.
- The Court concluded that the balance lay in favour of granting reduction; the decision would be reduced and could be taken again, taking into account downstream emissions: see [151] – 152].



(7) Other procedural matters cont.

- That conclusion driven by several factors including:
- Energy security, impact on economy and job creation not matters for the court: see [67].
- Knowing of the challenges (brought in time), and that *Finch* judgment was awaited, the developers took on the risk that the consents would be unlawful: see [67] and [121] to [122]. So, developers' commercial decision to proceed on risk [125].
- NB though the reduction was suspended (via stay) in order to allow reconsideration [155]-[156]
- That the effect of suspension was that the developers had options as to how to proceed pending the reconsideration, which would be a commercial decision for them to take, however, it was not equitable to allow the production of oil and gas prior thereto; but concerns about the effect of emissions from extraction did not extend to the preparatory engineering and construction works, and it was appropriate to allow such works to proceed in the period before reconsideration: [158] – [160] and [168].
- The reductions are prospective from the date on which the suspension ends.



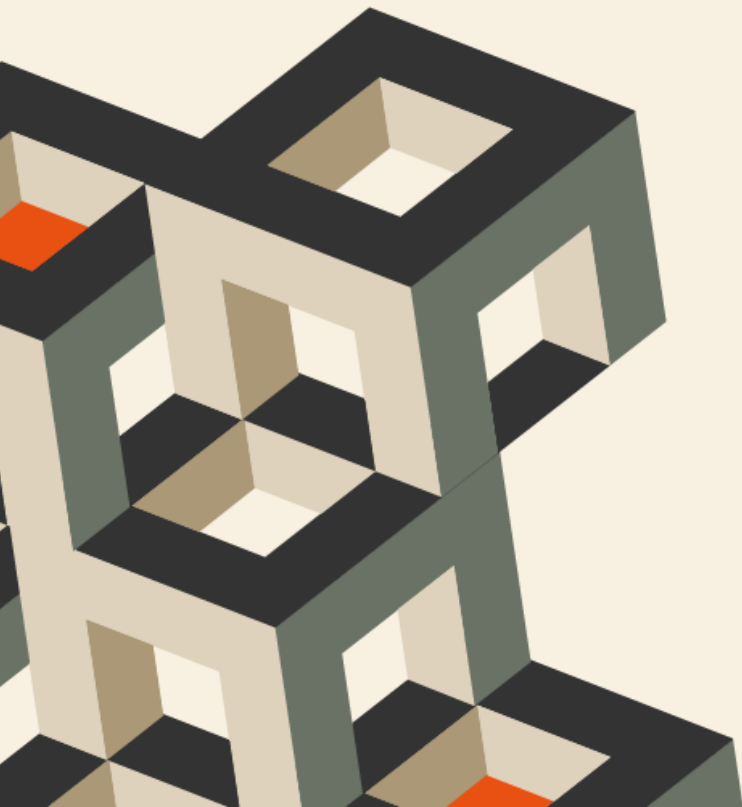
Rights of Way and Village Greens



Dr Ashley Bowes



1. **Breaks in use**
2. **Compatibility with use**
3. **Give and Take vs. Displacement**
4. **Costs protection**
5. **Admission of evidence**



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

- Application to add various footpaths over a shooting estate.
- Inspector held that all bar one of the elements of the statutory test met.
- Refused to confirm the DMMO because of a four-month break in public use.
- Occurred during the foot-and-mouth outbreak.
- Inspector found the cause or explanation for the non-use was irrelevant to whether the ways had been *actually enjoyed ... for a full period of 20 years*.



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

Highways Act 1980

31.— Dedication of way as highway presumed after public use for 20 years.

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

The Ramblers challenged the Inspector's decision on two grounds:

- **Ground 1: the foot-and-mouth outbreak were not capable of preventing a claim under s.31 HA 1980**
- **Ground 2: the Inspector wrongly applied a *de minimis* test**



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

Lang J held:

- the determination of “actual enjoyment” is a **matter of fact for the inspector** to evaluate against the evidence but that must be against the “applicable legal test” at [80]
- In considering that question, objectively ascertainable facts which place the public's **conduct in context** (e.g. that there was a flood which prevented them from using the way) will be relevant to answer the objective question of how the reasonable landowner would consider the matter at [86]
- The **reason for an intermission in the user of the way**, including whether or not the way is available, is likely to be relevant information in determining whether or not the way has been actually enjoyed for the prescribed period and whether there has been an interruption at [88]



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

Lang J held:

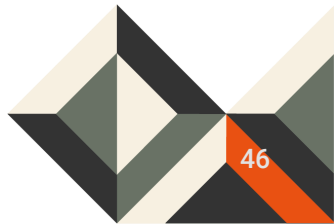
- There is no truth in the proposition that anything more than a *de minimis* break in user will *automatically* break in actual enjoyment at [111]
- Whilst the Inspector did not make that mistake, she did use the *de minimis* threshold as a benchmark against which she assessed the period of non-use at [118]
- It was irrational for the Inspector to conclude that a right was not being asserted during the four-month period of non-use during the foot-and-mouth outbreak at [127]



Ramblers Association v. Roxlena Ltd [2025] EWHC 537

Issues:

- The statutory language is very clear: *actual enjoyment* for a *full period of 20 years*
- Nothing in the wording which suggests actual enjoyment for less than 20-years can be overlooked if 'explicable'
- Lang J drew on case law from private rights of way and did not follow Roxlena (no.1) or De Rothschild
- Whilst Prescription Act 1832 has the same wording – very different implications
- Would allow public rights of way to be acquired where public chose not to use them, even though they may be available
- In the Court of Appeal: 21-22 April 2026



Cotham School v. Bristol City Council [2025] EWHC 1382

- School playing fields possessed by an academy school via a long lease.
- The freehold reversion held by Bristol City Council for the purpose of education.
- The land comprised 11 ha and was laid out as playing fields.
- School concluded that unrestricted public use was incompatible with its safeguarding duties and wished to regulate access by fencing the land.
- Local inhabitants brought an application to register the land as village green.
- Inspector found the land did not meet the tests due to signage on the land and objections to a prior application.
- Committee decided to register the land against that advice.



Cotham School v. Bristol City Council [2025] EWHC 1382

- Consequences of registration:
- (1) Local inhabitants can use the land at any time for informal recreation.
- (2) That use can vary and expand from the use which gave rise to registration.
- (3) Subject only to the constraint that the landowner may continue to use the land as before.
- (4) However it is not lawful to obstruct access to the land or erect buildings on the land (otherwise than for the better enjoyment by the local inhabitants)



Cotham School v. Bristol City Council [2025] EWHC 1382

- School brought a claim under s.14 Commons Registration Act 1965.
- Allows the High Court to consider the merits of the decision to add land to the village green register.
- It is not confined to a review of the legality original decision (cf. judicial review).



Cotham School v. Bristol City Council [2025] EWHC 1382

Section 15 Commons Act 2006

(1) Any person may apply to the commons registration authority to register land [where] ...

a **significant number** of the **inhabitants** of any locality, or of any neighbourhood within a locality, indulged **as of right** in **lawful sports and pastimes** on the land **for a period of at least 20 years** ...



Cotham School v. Bristol City Council [2025] EWHC 1382

Claim brought on four main grounds:

- (1) Section 15 was not available because registration would be incompatible with the purposes for which the land was held.
- (2) The use of the land was not as of right because of the signs on the land.
- (3) The objection by the landowner and School to a previous village green application rendered the subsequent use not as of right.
- (4) The use of the land was interrupted by the School's prior use of the playing fields, such that the use was not continuous for 20 years.



Cotham School v. Bristol City Council [2025] EWHC 1382

On Ground 1, HHJ Matthews held:

- The exclusion of s.15 in circumstances where the land was held for statutory purposes incompatible with TVG rights was well established by the Supreme Court line of authority in Newhaven and Lancashire/Surrey.
- Here, no dispute that the freehold reversion of the land was held by the Council for statutory education purposes.
- The fact that the land was possessed by the School was not the issue, it was still held by someone for carrying out statutory purposes at [261].
- Alternatively, even though the School had no statutory duties, the School *did* have a contractual obligation with the Secretary of State for Education to provide education services on the land at [262].



Cotham School v. Bristol City Council [2025] EWHC 1382

On Ground 1, HHJ Matthews held:

- Using the land for education purposes inconsistent with the rights which arise on registration.
- Because, *it prevents the physical education of the children in compliance with the law, and it prevents the use of the land for other education purposes, including the construction of new premises* at [270]
- The fact the land *could* be used for *some* education purposes was not the question.



Cotham School v. Bristol City Council [2025] EWHC 1382

Implications:

- Statutory incompatibility doctrine applies to land even where the body subject to the duties is not in possession of the land.
- Might mean that the doctrine applies when the body with the duties holds a mere interest (e.g. an easement or a profit).
- Indeed, the doctrine can bite even where no body with any legal duties hold an interest in the land (so long as a body with duties has sufficient control of the land).
- Implications for operation of s.31(8) Highways Act 1980 and acquisition of rights of way



Cotham School v. Bristol City Council [2025] EWHC 1382

Grounds 2 and 3

- Signs on the land were sufficiently worded and visible to render public use of the land contentious.
- Previous objections to a prior application was sufficient to render the use contentious.

Ground 4

- The landowners' use displaced the public
- That was qualitatively different to the golfers in Lewis or the port use in TW Logistics which amounted to 'give and take'
- The games of football, cricket or athletics were all much longer

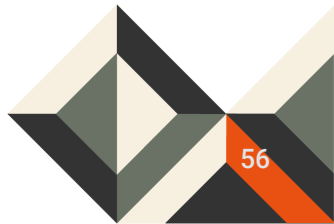
Court of Appeal refused permission to appeal



Cotham School v. Bristol City Council [2024] EWHC 154

Costs

- Claims under s.14 Commons Registration Act 1965 not covered by Aarhus Convention.
- Because it does not amount to a “review under statute” at [93], rather is in the nature of a re-hearing.
- A PCO under the Court’s inherent jurisdiction would be inappropriate given it is excluded from the bespoke regime at [99]
- The enduring effect of Venn.
- Rather a Pyrrhic victory for D2 however ...



Cotham School v. Bristol City Council [2025] EWHC 1382

Relevance of Inspector's reports:

- Inspector's record of the evidence is admissible.
- However, the Inspector's findings of fact were **not** admissible, because:
- **"The inspector is not thereby giving evidence of what he himself heard or saw. Instead, basing himself upon what he heard or saw, he is giving *his opinion* as to what happened. In the general law of evidence, such opinions as to matters of fact in issue in this case are inadmissible as opinion evidence going to issues before the court. This often referred to as the rule in *Hollington v Hewthorn* [1943] KB 857 ..."**



The weight to be given to the views of statutory consultees: where does the case law now stand?



Ben Fullbrook



Introduction

Covering:

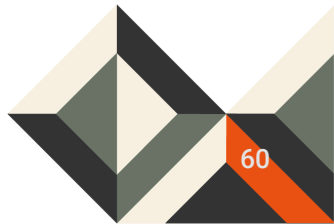
- (1) Who / what are “statutory consultees”
- (2) What does the case law say
- (3) What does this mean in practice



Why this presentation?

“Secondly, a decision-maker should give the views of statutory consultees, in this context the “appropriate nature conservation bodies”, “great” or “considerable” weight. A departure from those views requires “cogent and compelling reasons”.” *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), §72

But what does this actually mean? And how will the courts deal with such arguments?



(1) What is a “statutory consultee”?

Term is not defined in statute or the NPPF, but is defined in the PPG, in the Consultation and pre-decision matters section

“Statutory consultee - where there is a requirement set out in law to consult a specific body.”

PPG has a list of possible statutory consultees at Table 2 of the section

DMPO 2015 has a table in Sch.4 of possible statutory consultees

Neither are definitive / comprehensive



(1) Some less familiar faces

Statutory consultee

[Canal and River Trust](#)

[Coal Authority](#)

Control of major-
accident hazards
competent authority
(COMAH)

County Planning
Authorities

[Crown Estates
Commissioners](#)

[Department for
Business, Energy and
Industrial Strategy](#)

Designated
Neighbourhood Forum

[The Gardens Trust](#)

[Greater London
Authority](#)

[Health and Safety
Executive](#)

[\[Relevant\]Highways
Authority \(including
Highways England\)](#)

[Historic England](#)

Lead local flood
authority

Local Planning
Authorities

National Parks
Authorities

[Natural England](#)

[Office for Nuclear
Regulation](#)

Oil and Gas Authority

Parish Councils

Rail Infrastructure
Managers

Rail Network Operators

[Sport England](#)

[Theatres Trust](#)

Toll Road
Concessionaries



(1) Some familiar faces

Natural England (“NE”)

Conservation of Habitats and Species Regulations 2017

Reg.63(3). The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

Reg.5(b). “*the appropriate nature conservation body*” means— (i) Natural England, in relation to England / (ii) the Natural Resources Body for Wales, in relation to Wales.

Historic England

Reg.5A Planning (Listed Buildings and Conservation Areas) Regulations 1990

LPA needs to consult “the Commission” where devt affects the setting of certain listed buildings and/or development of a certain scale affects the character and appearance of a Conservation Area

s.91 Listed Buildings Act 1990 – “*the Commission*”: Historic Buildings and Monuments Commission for England, ie. Historic England



(2) The case law

The key cases:

- (1) *R (Akester) v Department for Environment, Food and Rural Affairs* [2010] EWHC 232 (Admin) (“**Akester**”)
- (2) *R (Morge) v Hampshire County Council* [2011] UKSC 2 (“**Morge**”)
- (3) *R (Prideaux) v Buckinghamshire County Council* [2013] EWHC 1054 (Admin) (“**Prideaux**”)
- (4) *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174 (“**Smyth**”)
- (5) *R (Together against Sizewell C Ltd) v Secretary of State for Energy, Security and Net Zero* [2023] EWHC 1526 (Admin) (“**Sizewell HC**”)
- (6) *R (Moakes) v Canterbury County Council* [2025] EWCA Civ 927 (“**Moakes**”)



Akester (1) - facts

D2 (Wightlink: statutory harbour authority) operated ferries on three routes between the mainland and Isle of Wight. D2 decided to introduce a new larger class of ferry.

A local residents' group, A, challenged D2's decision on basis of environmental impact of this new class on special area of conservation (designated under Habitats Directive 1992). And, challenged DEFRA (D1) over D1's inadequate powers to prevent D2.

NE expressed concern over the new class: "NE advises that it cannot be ascertained that the introduction of the 'W class' ferries will not have an adverse effect on the protected European Site"

D2 had obtained conflicting expert advice and had introduced the new class.

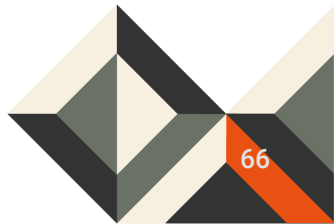


Akester (2) - Judgment

Outcome: A's application was successful

What is of most relevance today is Owen J's statement on NE's contribution at [112]:

“ ... The fact that Natural England had given contrary advice does not of itself render the decision Wednesbury unreasonable. In making its appropriate assessment Wightlink was not obliged to follow the advice given by Natural England; its duty was to have regard to it. But given Natural England's role as the appropriate national conservation body, Wightlink was in my judgment bound to accord considerable weight to its advice, and there had to be cogent and compelling reasons for departing from it... ” (emp. added)



Morge (1) - facts

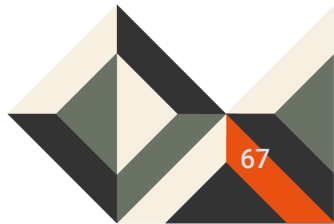
The LPA granted permission for a new bus route running along a disused railway line.

NE initially objected due to the potential impact on several protected species of bat.

Following the LPA conducting a survey of the impact on these bats, NE withdrew their objection.

M, a local resident, continued her objections all the way to the Supreme Court.

Outcome: M's appeal was dismissed by four of the five JSC, with Lord Brown delivering the lead judgment.



Morge (2) - Judgment

Baroness Hale gave one of the supplementary judgments, which at [45] is relevant today:

“ ... The planning authority were entitled to draw the conclusion that, having been initially concerned but having withdrawn their objection, Natural England were content that the requirements of the Regulations, and thus the Directive, were being complied with. Indeed, it seems to me that, if any complaint were to be made on this score, it should have been addressed to Natural England rather than to the planning authority. They were the people with the expertise to assess the meaning of the Updated Bat Survey and whether it did indeed meet the requirements of the Directive. The planning authority could perhaps have reached a different conclusion from Natural England but they were not required to make their own independent assessment.”



Prideaux (1) - facts

LPA granted permission for an 'energy from waste' facility adjacent to a landfill site.

Local residents' group, P, brought a challenge on various ecological grounds, including that the facility required various derogation licences for works affecting protected species.

NE had made initial objections, which were mitigated by the LPA. NE then granted the required derogation licences.

Outcome: P's application was unsuccessful, and the scheme went ahead.



Prideaux (2) – Judgment

Lindblom J spoke to NE's role in the process at [116]:

*“ ... It is clear that the committee gave considerable weight to the conclusions reached by Natural England. This is hardly surprising. It is exactly what one would expect. Natural England is the “appropriate nature conservation body” under the regulations. Its views on issues relating to nature conservation deserve great weight. An authority may sensibly rely on those views. It is not bound to agree with them, but it would need cogent reasons for departing from them (see, for example, the judgment of Sullivan J., as he then was, in *R. (Hart District Council) v Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin) (2008) 2 P. & C.R. 16, at paragraph 49), and the judgment of Owen J. in *R. (Akester) v Department for the Environment, Food and Rural Affairs* [2010] Env. L.R. 33, at paragraph 112).”* (emp. added)



Smyth (1) - facts

LPA granted permission for a residential development close to a special protection area for birds and an SSSI.

LPA had conducted appropriate assessment, and this assessment was endorsed by NE.

Local residents' group, S, challenged the grant of permission for failure to comply with EU conservation directive / UK habitats regulations.

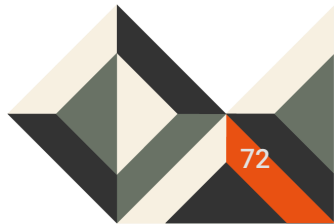
Outcome: S's appeal was dismissed.



Smyth (2) – Judgment

LJ Sales (as he was) at [85]:

“Moreover, the authorities confirm that in a context such as this a relevant competent authority is entitled to place considerable weight on the opinion of Natural England, as the expert national agency with responsibility for oversight of nature conservation, and ought to do so (absent good reason why not): Hart, supra, [49]; R (Akester) v DEFRA [2010] Env LR 33, [112]; R (Morge) v Hampshire County Council [2011] UKSC 2; [2011] 1 WLR 268, [45] (Baroness Hale); R (Prideaux) v Buckinghamshire County Council [2013] EWHC 1054 (Admin); [2013] Env LR 32, [116] ... ” (emp. added)



Sizewell HC (1) - facts

Very simplistically...

Claimants sought permission for judicial review of the SoS's decision to grant an order giving development consent for a nuclear power station.

NE had made comments on their concerns around specific elements of the scheme.

Outcome: the application was refused by the High Court, Holgate J (as he was).

The case went to the Court of Appeal, where the Claimants were unsuccessful again.



Sizewell HC (2) – Judgment

It is the decision of Holgate J in the High Court which concerns us today, at [106] - [114]:

[106]

*“NE is the “nature conservation body” for the purposes of the Habitats Regulations. In this case it performed the role of providing specialist advice within its remit to the defendant as the competent authority. There is no dispute that the defendant is entitled to disagree with NE. But the claimant complains that when the defendant did so in the present case he failed to comply with the line of authority which indicates that the decision-maker is expected to give significant weight to the views of an expert body such as NE and to give “cogent reasons” for disagreeing with their views (see e.g. *R (Akester) v Department for Environment, Food and Rural Affairs* [2010] Env.L.R. 33 at [112] and *R (Wyatt) v Fareham Borough Council* [2023] Env.L.R. 14 at [9(4)]).”* (emp. added)



Sizewell HC (3) – Judgment cont.

[107]

“... Even when disagreeing with the expert views of a body such a NE, the relevant standard to apply in assessing the adequacy of the reasons given is that set out in Save Britain’s Heritage v Number 1 Poultry Limited [1991] 1 WLR 153 and South Bucks District Council v Porter (No.2) [2004] 1 WLR 257 ...” (emp. added)

Brief reminder! And, worth a read in full at [36] of *Porter*:

“The reasons for a decision must be intelligible and they must be adequate. ...”



[108]

“... The level of reasoning which the law expects of a decision-maker disagreeing with the view of an expert body may depend upon whether that view is an unreasoned statement or assertion, or a conclusion which is supported by an explanation and/or evidence. It may also depend upon the nature of the subject-matter. Some advice may not call for reasoning and/or supporting evidence, other advice may do.”



Moakes (1) - facts

LPA consulted on grant of permission for a winery and warehousing in Kent Downs AONB.

NE, among others including local M, objected to the proposal.

LPA decided to grant permission despite the NE objections.

M sought judicial review of the decision on several grounds (including (2) the Council failed to give “great weight” to the views of expert consultees and/or failed to give reasons for disagreeing with them).

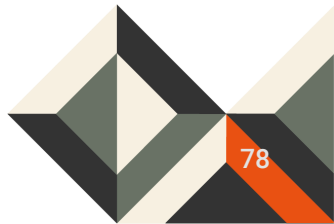
Outcome: M was unsuccessful on all grounds.



Moakes (2) – Judgment

Andrews LJ endorsed the judgment of Holgate J in Sizewell HC at [49]:

“Whilst the views of statutory consultees must be afforded great weight in the decision-making process, there is no heightened standard of reasoning just because a departure from the views expressed by a statutory consultee requires what have been described as “cogent and compelling” reasons. That phrase is a form of shorthand for the test in Porter (in which it was said that the reasons for a decision must be intelligible and adequate) and adds nothing to it. That was made clear by Holgate J in his illuminating judgment in R(Together against Sizewell C Ltd) v Secretary of State for Energy, Security and Net Zero [2023] EWHC 1526 (Admin); [2023] Env LR 29 at [106] to [114], a passage which I would wholeheartedly endorse.” (emp. added)



Moakes (3) – Judgment cont.

[51]

“ ... the reasons for disagreement with the statutory consultee on the key points in issue may emerge clearly from reading the decision as a whole, even if they are not separately identified. The question whether it is sufficiently clear from the OR why the planning officer takes a view contrary to the views expressed by a statutory consultee is acutely fact sensitive. Some cases may require the principal issues in controversy to be addressed in greater detail than others.”



(3) What does this mean in practice

WEIGHT

The law remains that decision makers should apply “great” or “considerable” weight to the views of statutory consultees. But is the correct in all cases? Absurd if Holgate J’s reasoning in Sizewell taken to apply just to reasons and not to weight?

REASONS

We can be sure that there is no requirement in a decision (inspector or local planning authority) to provide “cogent or compelling” reasons – or if there is that this means anything other than providing legally adequate reasons consistent with the *South Bucks* jurisprudence. What will be required is fact specific. Is it just the other side of the “weight coin”

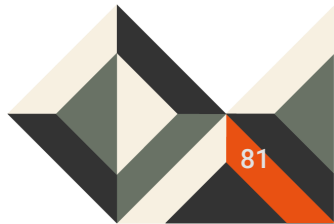


(3) Concluding thoughts

Sizewell HC, Holgate J at [114]

“ ... The present case illustrates the inappropriateness of relying upon statements in the Akester line of authority as a mantra, rather than looking properly at the materials in any given case in context ... ”

Does this really add anything at all to standard rationality/reasons arguments?



Climate change litigation update, including the Rights Community Action appeal



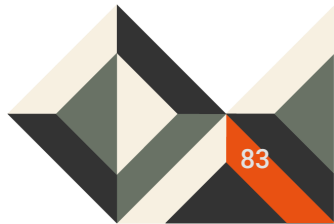
Alex Goodman KC



Climate Change: Judicial View of the Evidence

The Divisional Court held in *R (Spurrier) v SST* [2020] PTSR 240 at §559:

“(i) Concentration of GHGs in the earth’s atmosphere is directly linked to average global temperatures, (ii) the concentration of GHGs has been rising steadily –and, with it, mean global temperatures—since the start of the Industrial Revolution and (iii) the most abundant GHG, accounting for at least two thirds of all GHGs, is CO2 which is largely the product of burning fossil fuels. The increase in global temperature has resulted in (amongst other things) sea level change; a decline in glaciers, the Antarctic ice sheet and Arctic sea ice; alterations to various ecosystems; and in some areas a threat to food and water supplies. It is potentially catastrophic.”



Some UK Legislation on Climate Change

Section 19(1A) of the Planning and Compulsory Purchase Act 2004

Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.

Section 1 to the Climate Change Act 2008 as originally enacted:

“It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.”

The figure of 100% has now been substituted for 80% in section 1 of the CCA 2008 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 (SI 2019/1056).

Sections 5 and 10 of the Planning Act 2008- require National Policy Statements (e.g. on transport, energy; airports) to mitigate climate change.



Carbon Budgets

Secretary of State for BEIS is required to set for each succeeding period of five years, at least 12 years in advance, an amount for the net UK carbon account (“the carbon budget”); and to adopt policies and proposals to ensure that the net UK carbon account for any period does not exceed that budget (section 4).

The carbon budget for the period including 2020 was set to be at least 34% lower than the 1990 baseline. The carbon budget for the period 2033-37 was set by the Carbon Budget Order 2021 and reflects a commitment to reduce carbon emissions to 78% of 1990 levels by 2035. The Climate Change Committee published several reports alongside the Order setting out how different sectors would need to respond to the imperative to reduce emissions set out in the budget.



R (Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities [2024] PTSR 817

- West Oxfordshire District Council wants to promote an Area Action Plan in which the “Salt Cross Garden Village” would be required to be a “net zero” development.
- West Oxfordshire’s 2018 Local Plan includes policies for a free-standing exemplar Garden Village that is to be led by an Area Action Plan (“AAP”)
- Policy GV3 of the examination AAP: “To design buildings fit for the future, mitigating the impact of Salt Cross on climate change by achieving zero-carbon development through ultra-low energy fabric and 100% use of low and zero-carbon energy, with no reliance on fossil fuels.”
- In a report dated 1 March 2023 the Examining Inspectors of the Salt Cross Garden Village AAP concluded that policies in that plan which set energy efficiency standards that exceeded the energy requirements of building regulations were “unsound” and not justified.



Judgment on Interpretation of WMS

- Claimant submitted that the Inspectors' conclusions on the soundness of the plan proceeded on a flawed interpretation of the WMS.
- Lieven J agreed that the Inspectors' interpretation of the WMS, and therefore of the consistency of the AAP with the WMS was in error holding at [75] that:

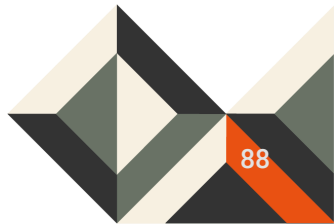
The WMS has to be interpreted in accordance with the mischief it was seeking to address, and with an "updating construction"... The WMS is not a statute but a policy, but even with a statute the mischief is a highly relevant consideration in interpretation, and the principle of applying an updating construction is well established. ***In order to make sense of the WMS in the circumstances that applied in 2023 it is essential to have regard to the fact that the restriction on setting conditions above Code Level 4, upon which the Inspectors relied in IR124, no longer apply ...*** To interpret the WMS so as to prevent or restrict the ability of the LPA to set a standard higher than Level 4 is plainly wrong in the light of subsequent events. For this reason, the Inspectors erred in law in their approach by finding that Policy 2 of the AAP was inconsistent with the WMS.



R (Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 1693 and [2025] EWCA Civ 990

Government's reaction to the first Rights: Community: Action case was to promulgate a new WMS on 13 December 2023 titled "Planning – Local Energy Efficiency Standards Update".

"The improvement in standards already in force, alongside the ones which are due in 2025, demonstrates the Government's commitment to ensuring new properties have a much lower impact on the environment in the future. In this context, the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale. Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures..."



***R (Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 1693 and [2025] EWCA Civ 990**

- Claimant challenged the new WMS on two grounds:
- Breach of section 19 of the Environment Act 2021 (failure to have due regard to the Environmental Principles Policy Statement).
- Cutting across powers in section 1 of the Planning and Energy Act 2008 which C said allowed energy efficiency standards to be set exceeding the Building Regulations minima.
- High Court rejected the claim; Court of Appeal rejected appeal for difference reasons.
- Appeal to Supreme Court outstanding.



***R (Finch) v Surrey County Council* [2024] UKSC 20; [2024] PTSR 988**

Developer applied for planning permission to extract oil in Surrey. The Council accepted as adequate an Environmental Statement prepared by the developer which did not assess the effects of the development in terms of the combustion of oil extracted. Supreme Court held by a 3/2 majority that combustion emissions from produced oil are indirect “effects of the project” that must be assessed in EIA.



R (Friends of the Earth Ltd), R (ClientEarth), R (Good Law Project) v SSBEIS (Net Zero Strategy) [2022] EWHC 1841, [2023] 1 WLR 225 (Admin)

Holgate J. The Secretary of State sets carbon budgets for five yearly periods. The SS also has to set before parliament a report known as the “Net Zero Strategy” which sets out policies and proposals he has prepared pursuant to section 13 CCA 2008 for meeting the carbon budgets. The NZS failed to explain how the policies and proposals would meet the statutory targets. Breach of CCA 2008 ss 13–14: inadequate information before the Secretary of State and to Parliament; mandatory relief and re-reporting



R (Friends of the Earth Ltd), R (ClientEarth), R (Good Law Project) v Secretary of State for ESNZ [2024] EWHC 995 (Admin)

Sheldon J: The revised Carbon Budget Delivery Plan was irrational because it was made on the assumption that the plans referred to would be delivered in full, rather than on an assessment of how likely they were to miss their targets.



R (Vince, Monbiot, Good Law Project) v SSBEIS

Challenge to Energy National Policy Statements.

Argued irrational and frustrates statute not to exercise power to review the 2011 statements in light of:

a. The amendment to section 1 to the Climate Change Act 2008 so that the UK's *net carbon account for the year 2050 is now* required to be 100% lower than the 1990 baseline rather than 80% lower, the target on which the Energy NPSs were premised on 27 June 2019,

b. Developments in the latest scientific understanding as to the urgency and scale of action needed on climate change; the UK's revised international commitments to the global effort to reduce temperature rises under the Paris Agreement; and

c. the unanimous parliamentary declaration of a "climate emergency" on 1 May 2019.

Government conceded the need to review the policy in December 2020 and the claim settled.



R (McLennan) v Medway [2020] Env. L.R. 5

Climate Change a Material Consideration

A next-door neighbour objected to an extension on grounds it would overshadow his solar panels, compromising his contribution to renewable energy and mitigating climate change. The planning officers advised that was not a material consideration because it was a purely private interest. Lane J quashed the planning permission holding that mitigation of climate change was a material planning consideration pursuant to the local plan; the NPPF and section 19(1A) of the Planning and Compulsory Purchase Act 2004 (which requires the local plan as a whole to contribute to the mitigation of climate change) and the failure to have regard to it was in fact irrational in the *Wednesbury* sense: the local planning authority was not entitled to reject the mitigation of climate change as *immaterial* (para 36).



R. (on the application of Stephenson) v Secretary of State for Housing, Communities and Local Government [2019] PTSR 2209

Talk Fracking challenged the adoption of paragraph 209(a) of the NPPF

Court held the government had failed to take into account scientific evidence put forward by the Claimant.

Such evidence, submitted in relation to a consultation response was obviously material.



***HJ Banks v SSCLG* [2019] P.T.S.R 668**

Climate Change a Material Consideration

The Secretary of State's decision refusing permission for the extraction of coal from a surface mine was quashed because of a failure to properly interpret the NPPF and for a lack of proper reasons. The underlying reason for refusing planning permission was that the Secretary of State gave very substantial weight to the need to reduce greenhouse gas emissions. It would appear therefore that as a matter of practice the Secretary of State already regards the contribution to greenhouse gases from coal extracted from the ground as a matter of great weight capable of outweighing all but a very exceptional set of countervailing benefits.



Unsuccessful Cases

R (ClientEarth) v SSBEIS [2021] EWCA Civ 43, [2021] PTSR 1400

On Appeal Sir Keith Lindblom giving the judgment of the court held:

- The Secretary of State proceeded on the basis of a correct interpretation of the policies which establish a “need” for fossil fuels and that there is a presumption in favour of granting consent (70-1)

- By ground 2 ClientEarth argued that the Secretary of State had erred in treating En-1 (energy policy) as requiring him to treat greenhouse gases as having no weight in her decision. The Court held (88) that the SS had lawfully concluded that the presumption in favour of fossil fuels set out in national policy applied and that the suite of policy statements themselves took account of climate change and GHG emissions targets. The SS properly acknowledged that GHGs could weigh against a development, but was entitled to disagree with the examining authority that such impact should have determinative weight.



R (Friends of the Earth) v Transport Secretary **[2021] PTSR 190 (Airports NPS case)**

Held at [122], that the UK's obligations under the Paris Agreement were given effect in domestic law, in that the existing carbon target under s.1 of the CCA 2008 and the carbon budgets under s.4 of that Act already meet and go beyond the UK's obligations under the Paris Agreement.

The duties under the CCA 2008 were taken into account when the Secretary of State decided to issue the ANPS. The reference to "government policy" in section 5(8) of the Planning Act 2008 as referring to a published policy cleared by a government department and did not include the ministerial statements in question, nor did it include the UK's ratification of the Paris Agreement which did not (as the time of designating the Airports NPS) give rise to legal rights or obligations in domestic law. It also held that the Secretary of State had taken account of the Paris Agreement.



Unsuccessful Cases

R (Friends of the Earth Ltd) v Secretary of State for International Trade/UK Export Finance (Mozambique LNG) [2023] EWCA Civ 14; [2023] 1 WLR 2011

The Secretary of State for International Trade and the Chancellor of the Exchequer lawfully approved an investment by UK Export Finance (UKEF) in a liquefied natural gas project in Mozambique. It had been tenable for UKEF to have concluded that funding the project was aligned with the UK's obligations under the Paris Climate Change Agreement of 2015.

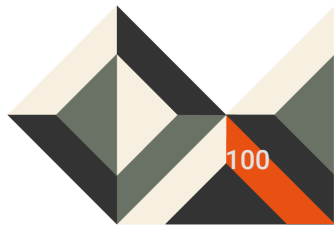
Questions on the interpretation of an unincorporated treaty were for the executive to determine, and decision-makers could not be challenged if they adopted a tenable view as to a point of unincorporated international law



Unsuccessful Climate Change Cases

R (Greenpeace Ltd) v Secretary of State for ESNZ [2023] EWHC 2608 (Admin)

Challenge to launching a new offshore oil and gas licensing round; net-zero compatibility treated as evaluative judgment for government. Claims dismissed applying Finch CoA decision to Strategic Environmental Assessment.



Unsuccessful Climate Change Cases

Cox and others v Oil and Gas Authority and another [2022] EWHC 75 (Admin)

Cockerill J. Challenge to the OGA's revision to its Strategy "Maximising Economic Recovery Strategy for the UK". court deferred to regulator's expertise; grounds based on failure to fulfil statutory purpose and irrationality were dismissed.

Elliott-Smith v Secretary of State for BEIS and others [2021] EWHC 1633 (Admin) [2021] PTSR 1795

Challenge to the design of the UK Emissions Trading Scheme (which was to replace the EU scheme) and exclusion of waste incineration. The court accepted the scheme had involved a "tenable" interpretation of Paris Agreement



Unsuccessful Climate Change Cases

R (ClientEarth) v Secretary of State for BEIS [2021] EWCA Civ 43

Challenge to a DCO for a major gas project. SS had not misinterpreted National Policy Statement EN-1. (Lewison, Lindblom, Lewis LJJ)

Transport Action Network Ltd v Secretary of State for Transport [2021] EWHC 2095

Challenges to the Road Investment Strategy 2. Argument that the Paris Agreement was an obviously material consideration was rejected and Holgate J held that sufficient regard had been paid to the Net Zero Target.



Unsuccessful Climate Change Cases

Together Against Sizewell C Ltd v Secretary of State for ESNZ [2023] EWHC 1526 (Admin)

Some climate change issues arose in relation to challenge to DCO for Sizewell C nuclear power station. Challenge based on alleged non-compliance with Habitats Regulations. Claim dismissed (permission refused on all grounds, most held to be totally without merit)

R (GOESA Ltd) v Eastleigh BC (Southampton runway) [2022] EWHC 1221 (Admin). [2022] PTSR 1473

Holgate J. Judicial Review of decision to grant planning permission for extension of a runway. One ground alleged a failure to take into account cumulative impacts on greenhouse gases from other developments. Court upheld the planning authority's judgment



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Unsuccessful Climate Change Cases

R (Boswell) v Secretary of State for Transport [2024] EWCA Civ 145

Challenge to assessment of carbon impacts for A47 Norfolk improvement programme. High Court dismissed; Court of Appeal dismissed (finding “no logical basis”/“air of unreality” in the cumulative emissions argument)

R (Boswell) v Secretary of State for Energy Security and Net Zero [2025] EWCA Civ 669;

Teesside power station DCO; Court of Appeal dismissed all grounds, upholding the Secretary of State’s approach and reasoning.

R (Boswell) v Secretary of State for Transport [2024] EWHC 1572 (Admin) A22 works-permission refused on all grounds.



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.

Thank you

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