

# Is climate change the new weapon of choice in planning and environmental JR? Plan B and its aftermath

## Part 1



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## Introduction

- The *Plan B* [2020] EWCA Civ 214 decision
- Obviously material considerations
- Other infrastructure policy decisions
- Other obviously material contexts
- Going forward after the Supreme Court's decision
- Alex Goodman and Part 2 of this joint talk

## The Plan B decision

- The argument: the Paris Agreement was so obviously material to the decision to designate the ANPS that it was irrational not to take it into account
- Recalls the three categories of consideration in R v Somerset County Council ex parte Fewings [1995] 1 WLR 1037 at 1049
- Divisional Court: found this point unarguable: [639] – [648]
- Court of Appeal: accepted the argument: [237]. It's reasoning however is very short
- Very different conclusions on the same issue; now to be resolved by the Supreme Court (hearing was early October; HAL appealed but the SST did not)

## Obviously material considerations

- In the development management decision-making context see for example ***DLA Delivery Ltd*** [2018] P.T.S.R. 2063
- Case concerned the need to take account of previous decisions covering exactly the same issues
- Such a decision was obviously material in context
- What is obviously material essentially requires application of normal ***Wednesbury*** principles, i.e. the matter is ‘so obviously material’ when no reasonable person would have failed to take it into account

## Other infrastructure policy decisions

- HS2; *R (Packham) v SST* [2020] EWCA Civ 1004
  - Two of same judges as in *Plan B Earth*
  - On the facts of this matter, the Paris Agreement was not obviously material to the decision to proceed with HS2
- Road Investment Strategy 2 – current challenge on climate change grounds (similar arguments to *Plan B Earth*)
- National Networks NPS – threatened challenge on climate change grounds (arguing that review of the NPS is required)
- Energy NPSs – current challenge on climate change grounds (arguing that review of the NPS is required)

## Other obviously material contexts?

- Adoption of development plans?
- NPPF makes multiple reference to mitigating the effects of climate change (defined as “*Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions*”).
- See for example:
  - 8, the definition of sustainable development
  - 20, need for strategic policies to address climate change mitigation
  - 148, 149, planning system needing to support the transition to a low carbon future
- What more might be needed?

## Climate change post the Supreme Court's decision

- Judgment pending
- If the CoA's decision is upheld, can expect to see close scrutiny of infrastructure policy making
- If it is not, climate change issues are nonetheless here to stay
- Achieving net zero accepted by the government to require transformational change, the issue being the extent of the court's role in accelerating that change

# Thank you for listening

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