

Climate Change: current issues



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Climate change: current issues

- Legislative framework: the Climate Change Act 2008 and the Carbon Budget Order 2021
- Policy update: Net Zero Strategy, NDC, NPPF and COP26
- Current pending planning decisions: Cumbria coal mine and expansion of Leeds-Bradford Airport
- Recent cases: *Friends of the Earth*, *Packham*, *Transport Action Network*, *ClientEarth*, *Vince*, *Elliott-Smith*
- Pending/future cases: *Plan B*, *Good Law Project*, *Finch*

Legislative framework

Climate Change Act 2008

Section 1:

- Originally enacted: reduction by 2050 to at least 80% below 1990 level
- 2019 Order: reduction by 2050 to at least 100% below 1990 level (“net zero”)

Section 4: duty to set carbon budgets for five year periods

Section 13: duty to prepare policies to achieve carbon budgets to 2050

Legislative framework

The Carbon Budget Order 2021

16 April 2021

Sixth carbon budget (covering 2033-2037)

Target: 78% reduction in emissions by 2035

CCC comment (December 2020): on track to achieve Net Zero, and compliance with Paris Agreement target of limiting increase to 1.5 degrees above pre-industrial levels. A “world leading” position.

Policy Update

- Net Zero Strategy – expected in November 2021
- UK has Presidency of COP26 in November 2021
- Nationally-determined contribution (“NDC”) communicated to the UNFCCC Secretariat (December 2020): emissions reduction of at least 68% by 2030 (highest of any major economy to date).
- NPPF 2021: planning system should “shape places in ways that contribute to radical reductions in greenhouse gas emissions”: para. 152 (and section 14)

Current/pending planning decisions

- September/October 2021: Inquiry into decision by Cumbria CC to grant permission for a new underground metallurgical coal mine at Whitehaven in Cumbria (“called-in” by SoS to examine “the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change”). Friends of the Earth a Rule 6 Party.
- 6 April 2021: Direction by SSHCLG preventing Leeds City Council from granting permission until SoS considers the proposal for expansion of Leeds-Bradford Airport.

Recent cases

R (Friends of the Earth Ltd and Plan B Earth) v SST [2021] PTSR 190

2018 Airports National Policy Statement (“ANPS”) in relation to a third runway at Heathrow was lawful because the SST did have regard to the Paris Agreement and the ANPS required any future development consent application to be assessed against the carbon reduction targets in place at the time.

Recent cases

R (Packham) v SST [2021] Env LR 10

The Government did not fail to consider the implications of the Paris Agreement and the Climate Change Act 2008 in the decision to proceed with HS2 following the Oakervee review.

The statutory and policy arrangements for achieving net zero by 2050 were said to “*leave the Government a good deal of latitude in the action it takes to attain those objectives*” [87].

Recent cases

R (Transport Action Network Ltd) v SST [2021] EWHC 2095 (Admin)

In decision to set the Road Investment Strategy 2 (for 2020-2025) (providing for various strategic road network improvement schemes), the SST had not unlawfully failed to take into account the Paris Agreement, the Net Zero duty and the carbon budgets.

No breach of the requirement in s.3(5) of the Infrastructure Act 2015 to have regard to the effect of the strategy on the environment (which does not specifically include effect on climate change).

Recent cases

R (ClientEarth) v SSBEIS [2021] PTSR 1400

Decision to grant development consent for two gas-fired generating units at an existing power station was based on a lawful interpretation of the Overarching National Policy Statement for Energy (“EN-1”) as not requiring a quantitative assessment of need. The weight to give to GHG emissions impact is a matter for the decision-maker, and SoS was entitled to regard it as not being determinative in the balancing exercise.

Recent cases

R (Vince & Others) v SSBEIS (CO/1832/2020)

JR claim against unlawful failure by SoS to review the Energy NPSs designated in 2011 in the light of changes in climate change policy, including Net Zero.

Settled prior to hearing due to announcement by SoS that it would consult on revised Energy NPSs.

Consultation commenced on 6 September 2021 (and closes on 29 November 2021): <https://www.gov.uk/government/consultations/planning-for-new-energy-infrastructure-review-of-energy-national-policy-statements>.

Recent cases

R (Elliott-Smith) v SSBEIS [2021] EWHC 1633 (Admin)

The UK Emissions Trading Scheme (“ETS”), which replaced the EU ETS after Brexit did not unlawfully fail to take account of the Paris Agreement (albeit not expressly referencing it), and served the statutory purpose in CCA 2008 s.44 of “limiting or encouraging the limitation of activities” causing GHG emissions.

Pending / future cases

R (Plan B Earth & Others) v SSBEIS (CO/1587/2021)

Judicial review claim alleging a failure by the Government to take practical and effective measures to comply with the Paris Agreement and the CCA 2008, and alleging that inaction on climate change has breached human rights under Articles 2 (right to life), 8 (right to private and family life) and 14 (prohibition on discrimination).

Permission refused on the papers (subject to a right to renew application at an oral hearing): 4 October 2021 - <https://planb.earth/wp-content/uploads/2021/10/PR-4-Oct-21.pdf>.

Pending / future cases

Good Law Project “expect to issue proceedings promptly” to challenge an alleged failure to review/update the Airports NPS in light of the Net Zero commitment and other recent climate change developments.

In a letter dated 6 September 2021, SST decided that it was not appropriate to review the ANPS under section 6 of the Planning Act 2008. Although the changes “represent a significant and unforeseen change in circumstances”, “it is not possible to conclude properly that any of the policy set out in the ANPS would have been materially different had these circumstances been anticipated at the time of designation”.

<https://goodlawproject.org/update/government-legal-commitment/>

Pending / future cases

R (Finch) v Surrey CC [2021] PTSR 1160

Court of Appeal hearing on 16-18 November 2021

JR against the grant of planning permission for 4 new oil wells.

The issue is whether the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 required an environmental impact assessment (“EIA”) to assess the effects of GHG emissions resulting from future combustion of oil produced by the development, typically as a fuel for motor vehicles.

High Court (Holgate J) held that they do not.

Thank you for listening

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