

Where are we on climate change grounds of challenge after Heathrow v FoE?



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Heathrow v Friends of the Earth

Friends of the Earth Ltd and others v Heathrow Airport Ltd [2020] UKSC 52

- 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.

High Speed Rail for the Win

Packham v Secretary of State for Transport [2020] EWCA Civ 1004; [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”: at [87].

Away from trains, on to Roads

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

- In the 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).

To Gas or not to Gas

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.

Wednesbury strikes again

Abbotskerswell Parish Council v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1633 (Admin)

- SSHCLH had not erred in granting outline planning permission for a major mixed-use development.
- He had acted rationally in deciding that he had the environmental information reasonably required as to the effect of the proposed development on climate change and biodiversity, and he had not failed to comply with the Conservation of Habitats and Species Regulations 2017 Pt 6 (2) reg.70(3).

A trade is a trade

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

- Post Brexit, the EU TTS was replaced by the UK Emissions Trading Scheme (“ETS”).
- The Court held the ETS 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.

Looking Forward

Finch v Surrey CC [2021] PTSR 1160

- Judicial review against the grant of planning permission for 4 new oil wells.
- Issue: 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.
- Holgate J held they do not. Off to the Court of Appeal.

Thank you for listening

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