

**Welcome to Landmark Chambers’
‘Planning Case Law in 2021: A re-cap’
webinar**

The recording may be accessed [here](#).

Your speakers today are...



Matthew Dale-Harris



Matthew Fraser

NPPF 11(d) – the “tilted balance”

Paul Newman New Homes Ltd v SSHCLG [2021] EWCA Civ 15

Monkhill Ltd v SSHCLG [2021] EWCA Civ 74

- Whether there are no “relevant” plan policies for the purposes of the first “trigger” of the tilted balance is a matter of planning judgment;
- The basket of “most important” policies for the second trigger can be up-to-date even if it does not constitute a body of policies sufficient to determine the acceptability of the application in principle.
- The application of the policy requiring great weight to be given to conserving and enhancing AONBs is capable of providing a “clear reason for refusal”.

NPPF 80 (isolated homes) and 199 (LTS heritage harm)

- *City and Country Bramshill Ltd v SSHCLG* [2021] EWCA Civ 320
 - Extended broad approach to policy interpretation favoured in *Hopkins Homes* and *Samuel Smith (Tadcaster)*.
 - Whether dwellings are “isolated homes in the countryside” requires considering whether development would be physically isolated in the sense of being isolate from a settlement. What is a settlement and whether development is isolated from it are both matters of planning judgment
 - *Palmer* approach to weighing heritage benefits and harms no a requirement. Query whether *Bedford* approach to calibrating heritage harm is good law.

NPPF para. 90/91 – retail policy

R (Asda Stores) v Leeds City Council [2021] EWCA Civ 32

The NPPF policy that retail development with a “significant adverse impact” on a town centre “should be refused” had no special status setting out an imperative to refuse in every case. It required an implicit planning judgment against other factors. Irrelevant whether it was treated as a “presumption” or not.

London Plan Policy D9: tall buildings

R(Hillingdon) v Mayor of London [[2021] EWHC 3387 (Admin)

- Part B of Policy D9 requires London boroughs to identify suitable locations for tall buildings within their local plans, but the language of the Policy does not suggest that either Part B or Part A are gateways to consideration of an application against Part C which sets out criteria against which the impacts of tall buildings should be assessed.
- Mayor had been entitled to assess a tall building against Part C in a context where the building was outside of areas identified as suitable and conclude that proposal accord with DP as a whole.

The meaning of “demolition”

Clin v Walter Lilly & Co Ltd [2021] EWCA Civ 136

Where a substantial part of a building is to remain intact, consideration of the impact of the proposed retention and loss on the character and appearance of the conservation area is not relevant to the question of whether works constitute “demolition” under the Planning Acts. Answering this question is a purely quantitative exercise, i.e. by reference to the extent of the demolition, rather than any qualitative exercise in the light of the character or appearance impact.

Plan making

- *Cherwell Development Watch Alliance v Cherwell DC* [2021] EWHC 2190 (Admin)
 - Inspector entitled to adopt conclusions of inspector on Oxford City plan as to level of unmet housing need, where those conclusions underpinned GB release in Cherwell.
 - Confirmed broad approach to replacement of sporting facilities (NPPF 99(b))

Working from home

Sage v SSHCLG [2021] EWHC 2885 (Admin)

In determining whether a change of use within a dwellinghouse is “incidental to the use of the dwellinghouse as such” and therefore does not require planning permission, the key question concerns whether there has been a change in the character of the use. Environmental factors (e.g. noise impacts) are relevant but not themselves the test.

What is “incidental” may have shifted with changes in work habits since Covid.

Permitted development applications

- *R(Smolias) v Herefordshire* [2021] EWHC 1663
- Lang J followed *New World Payphones* in holding that LPA is bound to consider whether development is within scope of PD right
- Also held that there was no obligation for the authority to deal with prior approval notification separately from the substance of prior approval. LPA had been entitled to determine both at same time, where it had sufficient information and applicant had fair opportunity to address matters.

Neighbourhood Plan legal challenges

R (Fylde Coast Farms) v Fylde Borough Council [2021] UKSC 18

The specific time limits applicable to challenges to interim stages in the making of a neighbourhood plan are restrictive in the sense that a challenger cannot wait until the final making of the plan before challenging the lawfulness an interim stage.

Enforcement and legitimate expectation

- *Royale Parks Ltd v SSHCLG* [2021] EWCA 1101
 - Question of fact whether a (now lawful) breach of condition applied to the entirety of the land to which the permission related.
 - Court willing to accept the principle that a legitimate expectation might preclude enforcement action but on these facts the Council had not committed itself to a particular course of action

Other cases to note

- *R (Rights: Community: Action) v SSHCLG* [2021] EWCA Civ 1954 (GPDO and UCO amendments did not “set the framework for future development consent” and there was therefore no requirement for a “strategic environmental assessment” prior to their making).
- *CPRE (Kent) v SSCLG* [2021] UKSC 36 (unsuccessful claimants at permission stage for JR and s.288s will usually be liable for both defendant and interested party’s reasonable costs of filing an AOS, subject to any Aarhus cap)
- *R (Save Stonehenge World Heritage Site Ltd v SST* [2021] EWHC 2161 (Admin) (DCO for new dual carriageway and tunnel at Stonehenge quashed due to failing to consider an alternative proposal and take into account all heritage impacts).

Cases to watch in 2022

- *R(Wyatt) v Fareham* [2021] EWHC 1434 (Admin) going to CA
- *Hillside Parks Ltd v Snowdonia National Park Authority* [2020] EWCA Civ 1440 going to the SC
- Still waiting on SC PTA decision for the NPPF 11(d) cases
- Still waiting on SC PTA decision for *Asda v Leeds*
- CA judgment in *R(Finch) v Surrey* awaited (hearing in Nov 2021)

Thank you for listening

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