

Defining the project and its effects: why does it matter?



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Introduction/Structure

- **Defining the project and its effects: why does it matter?**
 - Paul Brown QC, Landmark Chambers
- **The recent case law: *Finch*; *Greenpeace*, *An Taisce***
 - Matt Fraser, Landmark Chambers
- **Practical thinking: the importance of defining the project**
 - Nick McDonald, Pinsent Masons
- **Practical thinking: “indirect effects”, supporting decisions and decision-makers**
 - Stephanie Baldwin, Mott MacDonald
- **Q&A**

Why does this matter? Applicants and LPAs

The risk of judicial review

- Hard-edged principles rather than matters of judgment? E.g. case law on salami slicing:
 - ***Burridge v. Breckland* [2013] EWCA Civ 228**
 - ***R (Larkfleet Ltd) v. South Kesteven DC* [2015] EWCA Civ 887**
 - ***Bowen-West v. SSCLG* [2012] EWCA Civ 321**

“the courts have been concerned, energetically, to put a stop to the device of using piecemeal applications as a means of excluding larger developments from the discipline of EIA”
- The importance of EIA and the (historically) more limited scope for refusing relief
 - ***Berkeley (No. 1)* [2010] AC 603**

Why does it matter?

The retreat from hard edged principles:

- ***Walton v. Scottish Ministers***
- ***Champion***
- ***Wingfield v. Canterbury City Council [2019] EWHC 1975***
- ***Finch***

But the residual question: if it's a matter of judgment, what are the guidelines?

Why does it matter?

Shifting the emphasis from “whether it can be predicted” to “is it an effect”?

- Arguments based on the difficulty of carrying out an assessment
- Not just “what is the project”, but also “what are the ‘effects’”?
 - And can you separate the two?

Why does it matter? Campaign Groups and Objectors

- Ensuring that the consequences of development are properly taken into account
- The oxygen of publicity
- The particular difficulties with climate change: extraction almost always leads to combustion ... but combustion is not part of the development for which permission is sought
- Arguments about substitution: the shift from “whether it will happen” to whether it is an effect

Why does it matter

The link between “effects” and “material considerations”

- Things can be material planning considerations even though they are not the subject of EIA
- **Finch** is only about what needs to go in an ES. So why is it a big deal?
- Because **Finch** turns on whether downstream emissions are an “effect”. If they are not an “effect”, how can they be attributed to the development so as to be a material consideration?

Why does it matter?

- The cross-over with SEA: is there any?

Thank you for listening

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