



Francis Taylor Building

FTB Virtual Planning Forum

Case Law Update

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ClientEarth [2021] EWCA Civ 43

Holborn Studios (No.2) [2020] EWHC 1509 (Admin)

City and County Bramshill [2021] EWCA Civ 320

Liverpool Open and Green Spaces CIC [2020] EWCA Civ 861

LB Hillingdon [2020] EWCA Civ 1005

Leech Homes [2021] EWCA Civ 198

DB Symmetry [2020] EWCA Civ 1331

Blackbushe Airport [2021] EWCA Civ 398

Norfolk Homes [2020] EWHC 2265 (QB)

Hillside Parks Ltd [2020] EWCA Civ 1440

Gladman [2021] EWCA Civ 104;
Monkhill [2021] EWCA Civ 74; *Paul Newman Homes* [2021] EWCA Civ 15

Gluck [2020] EWCA Civ 1756

Parkdean Holiday Parks [2021] EWHC 646 (Admin)

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ClientEarth v SSBEIS and Drax Power Ltd [2021]

EWCA Civ 43

BACKGROUND

- Challenge to DCO under PA 2008
- New fossil fuel power generation – gas turbines
- SoS decision against ExA recommendation
- NSIP regime – Energy NPS EN-1

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ClientEarth v SSBEIS and Drax Power Ltd [2021]

EWCA Civ 43

ISSUES

- Interpretation of National Policy Statement EN-1
 - Approach to 'need', and contribution to meeting need.
 - Approach to Greenhouse Gas emissions and reliance on other regimes and mechanisms
- Application of balancing exercise under s.104(7) of Planning Act 2008

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ClientEarth v SSBEIS and Drax Power Ltd [2021]

EWCA Civ 43

DECISION

1 – Paragraph 3.2.3 of EN-1 did not require a “quantitative” assessment of need to always be carried out (and not here). Weight to be given to need in a particular case is not “immutably fixed”, must be proportionate to a project’s actual contribution. Here the SoS’s mind was open to possibility of reducing weight.

2 – Under EN-1, CO2 emissions are not necessarily of themselves an automatic obstacle to consent, but may be taken into account and carry decisive weight. The SoS properly interpreted the NPSs by treating GHG emissions as a “significant adverse impact.”

3 – The SoS did not fetter her s.104(7) discretion in having regard to the policy in the energy NPSs, and give weight in accordance with policy compliance



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Holborn Studios (No.2) [2020] EWHC 1509 (Admin)

BACKGROUND

- Redevelopment of building used as photography studio
- First grant of planning permission quashed
- Availability and redaction of viability report



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Holborn Studios (No.2) [2020] EWHC 1509 (Admin)

ISSUES

- Statutory provisions: background papers & exempt information – s.100D and schd.12A, LGA 1972
- Previous case law: *R(Perry) v LB Hackney* [2014] EWHC 1721 (Admin)
- NPPF & PPG
- Difficulties in published data



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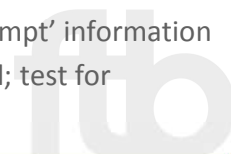


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Holborn Studios (No.2) [2020] EWHC 1509 (Admin)

DECISION

- S.100D obligations not complied with; schd. 12A exemption not correctly approached
- NPPG sets out clear standard principles which should be followed, and viability reports made publicly available; *Perry* overtaken by PPG
- Publicly available except in exceptional circumstances
- Not unfettered obligation of disclosure: public interest test
- Implications beyond viability – other would-be ‘exempt’ information
- Aspects not decided: legitimate expectation ground; test for disclosure focused on consultation



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City and County Bramshill [2021] EWCA Civ 320

- Redevelopment of / around Grade I listed Jacobean mansion and Grade I registered park and garden
- 33 appeals against refusal of PP and enforcement notices
- Some granted, some refused
- C & C successfully challenged **some** of the refusals in the HC – appealed to CA in respect of refusals not overturned
- Appeal grounds concerned
 - NPPF policy on isolated homes in the countryside (para.79)
 - Assessment of harm and benefit to heritage assets

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City and County Bramshill [2021] EWCA Civ 320

“Isolated homes in the countryside”

- Concept of planning policy not law
- Question of whether the development would be physically isolated, in the sense of being **isolated from a settlement**
- **Not:** remoteness from other dwellings.

S.66 and the “internal heritage balance”

- No legal requirement to balance heritage harm and benefit prior to the para.196 NPPF balancing act
- No single prescribed way of balancing harm against benefits

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Liverpool Open and Green Spaces CIC [2020] EWCA Civ 861

- Planning applications for residential development on Council-owned land and the relocation of a miniature railway
- Grounds of appeal related to interpretation of “green wedge” policy and s.66 heritage duty
- Prior issue – whether appeal academic – court heard appeal on the basis of wider public interest in settling interpretation of Policy OE3

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Liverpool Open and Green Spaces CIC [2020] EWCA Civ 861

- General principles for the interpretation of green belt policies (para.33):
 - Preserving “openness” – concept of policy not law
 - Application of concept involves realism and common sense – planning judgment
 - Visual effects can be relevant to openness
 - (Policy) context is key

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Liverpool Open and Green Spaces CIC [2020] EWCA Civ 861

- S.66 duty
 - Failure to refer to consultation response of Urban Design Officer in Officer's Report an error of law
 - Objections raised by Officer "an obviously material consideration"
 - Similarities with the decision in *Loader v Rother DC* [2016] EWCA Civ 795

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LB Hillingdon v SoS and HS2 [2020] EWCA Civ 1005

- Challenge to SoS decision to grant approval under HS2 Act of plans for works to create new wetland as part of ecological mitigation
- Approval refused by LB Hillingdon Planning Committee on the basis that no evidence or information on effect of proposed works on archaeological remains submitted (HS2 argued that it would later assess any effects itself)
- Planning Inspector recommended upholding refusal – SoS rejected recommendation

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LB Hillingdon v SoS and HS2 [2020] EWCA Civ 1005

- At issue: interpretation of HS2 Act and Sch.17 and status of guidance documents which were part of contractual agreement between SoS and HS2
- SoS and HS2 argued (as accepted by HC) that guidance significantly cut down the powers of local authority to withhold approval



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LB Hillingdon v SoS and HS2 [2020] EWCA Civ 1005

- CA disagreed (see in particular paras.10, 68-70)
 - duty to perform assessment of impact imposed by Parliament on LAs
 - non-delegable
 - cannot be cut down/circumvented by guidance or contractor taking it on itself to conduct some non-statutory investigation into impact
- Sufficiency of information – a question for the court rather than the decision-maker



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Leech Homes [2021] EWCA Civ 198

- Whether, for the purposes of assessing compensation on compulsory acquisition, land is to be treated for planning purposes as land to which green belt policies apply
- Leech Homes' land compulsorily acquired for Morpeth Northern Bypass
- Application for CAAD for 135 dwellings refused by Northumberland CC and UT
- Application of GB policies determinative

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Leech Homes [2021] EWCA Civ 198

- Issue: saved Policy S5 of Northumberland Structure Plan provided for GB extension northward but precise boundaries not defined in local plan
- 2 stage process where boundaries not clear:
 1. Land falling within ambit of Policy S5 is capable of being GB land – in principle, policies apply
 2. Consider whether there is sufficient reason for concluding that when boundaries are determined, land in question will be excluded (planning judgment)
- Council costs not recoverable absent unreasonable behaviour

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DB Symmetry Ltd v Swindon Borough Council & Anor [2020] EWCA Civ 1331

BACKGROUND

- Large urban extension to the east of Swindon
- Planning permission granted subject to apparently unlawful condition requiring dedication of land as a highway

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DB Symmetry Ltd v Swindon Borough Council & Anor [2020] EWCA Civ 1331

ISSUES

- Whether planning condition required the dedication of the road as a highway, or whether it merely regulated the physical attributes of the roads
- What approach the court should take to the validity/validation principle of interpretation in this case

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DB Symmetry Ltd v Swindon Borough Council & Anor [2020] EWCA Civ 1331

DECISION

- Construed condition by reference to reasonable reader
- Condition could not lawfully require developer to develop land as highway without compensation (*Hall & Co Ltd v Shoreham by Sea Urban DC* [1964] 1 WLR 240)
- Validity/validation principle: where Court is faced with a choice between two realistic interpretations, will prefer interpretation which results in the instrument being valid.

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Blackbushe Airport [2021] EWCA Civ 398

BACKGROUND

- Airport with runways and terminal
- Registered as common land
- Application to de-register
- Curtilage

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Blackbushe Airport [2021] EWCA Civ 398

ISSUES

- Basis of successful de-registration of common land
- Correct approach to curtilage under the Commons Act 2006
- Relation to other statutory uses of the word “curtilage” (listed buildings; PDL)



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Blackbushe Airport [2021] EWCA Civ 398

DECISION

- Inspector applied the wrong test: asked himself whether land and building together formed an integral part of the same unit (because he found functional equivalence between them).
- Instead, the Inspector should have asked whether the land in question (the runway) fell within the curtilage of the building in question (the terminal)
- Land must be sufficiently proximate to building in question, must be an integral whole; size not determinative
- No difference for listed buildings definition



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Para.11(d) NPPF and the tilted balance

Paul Newman Homes [2021] EWCA Civ 15

Trigger of “no relevant development plan policies” does not apply where there is at least one relevant policy.

Monkhill [2021] EWCA Civ 74

Holgate J’s “15 point plan” on meaning and effect of para.11 affirmed.

“Clear reason for refusal” involves planning judgment following application of the relevant NPPF paragraph.

Gladman [2021] EWCA Civ 104

Development plan policies not to be disapplied when applying titled balance.

Tilted balance and s.38(6) exercises can be lawfully combined
Para.213 NPPF can apply when conducting tilted balance.

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Interpretation of Planning Permission

Norfolk Homes [2020] EWHC 2265 (QB)

S.73 planning permissions will not be bound by s.106 Agreements from the original permissions unless they were drafted as such or varied by deed so as to bind the s.73 permission.

Hillside Parks Ltd [2020] EWCA Civ 1440

“Lucas” principle: Permission not to be regarded in law as a permission to develop the plot as a whole but as a permission for any of the development comprised within it – confined to the facts of that case.

Potential implications for “drop-in permissions” in larger schemes.

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Procedure

Gluck [2020] EWCA Civ 1756

- The time for granting a prior approval application under the GPDO can be extended by agreement in writing.

Parkdean Holiday Parks [2021] EWHC 646 (Admin)

- Exceptional factors (significant error in red line area on application) justified extending time period (by several years) for bringing JR and granting relief.

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Ones to watch out for

CPRE Kent v Secretary of State for Communities and Local Government UKSC 2019/0174

Claimant liability for costs of interested parties at the permission stage.

R (Fylde Coast Farms Ltd (formerly Oyston Estates Ltd)) v Fylde Borough Council UKSC 2019/0167

When time starts to run in Neighbourhood Plan JR challenges.

R (Flynn) v London Borough of Southwark (CA) C1/2020/0447

Interpretation of scope of delegation by members to officers in planning decisions.

R (Swainsthorpe Parish Council) v Norfolk County Council (HC)

Scope of matters that can be dealt with by a statutory consultee (in this case the highways authority).

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