

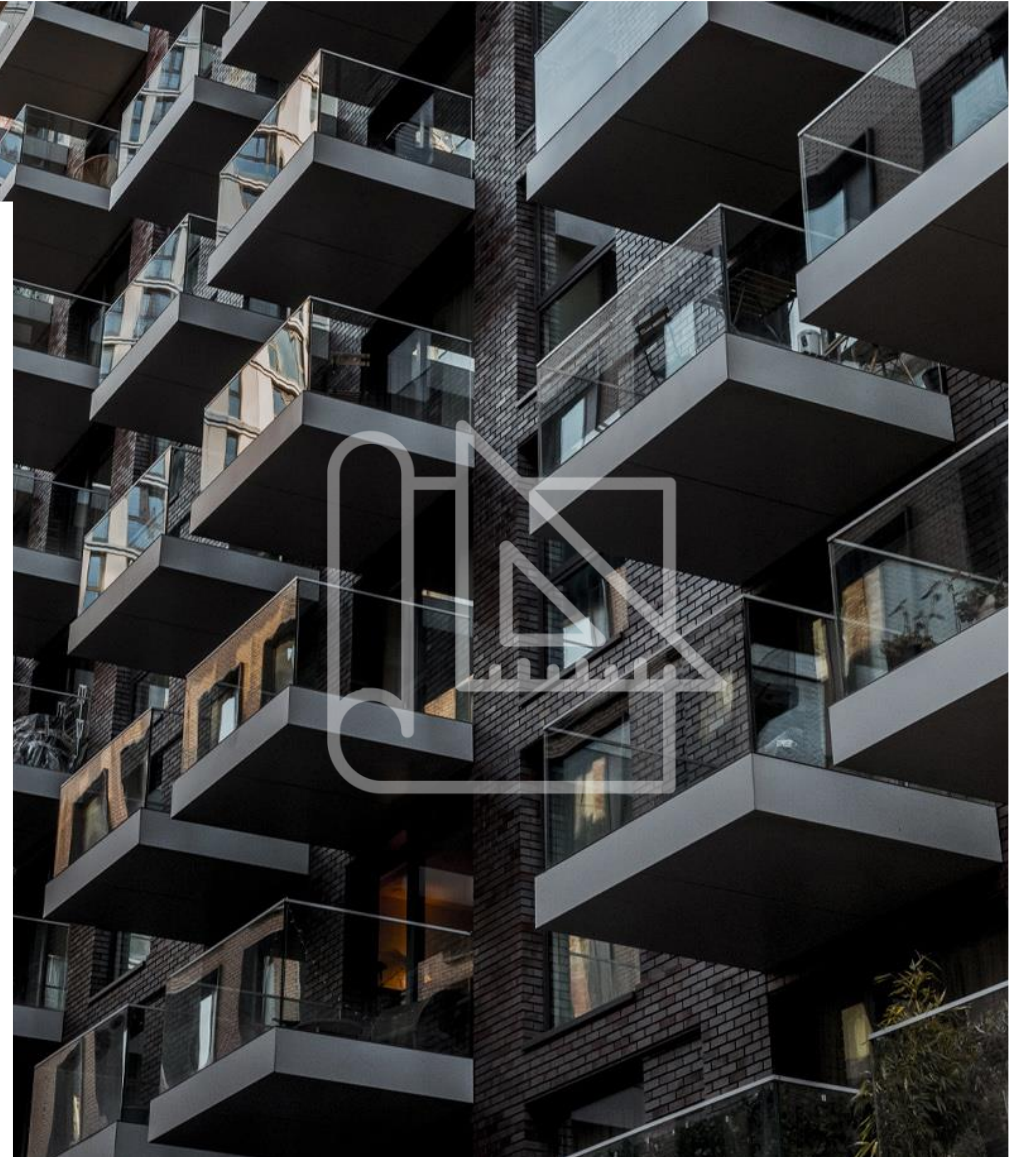


Francis Taylor Building



# Quarterly Planning Case Law Update

4 March 2025





# Meet the speakers



**Craig Howell Williams KC**



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## Cases

1. *R (Bradbury) v Brecon Beacons National Park Authority* [2024] EWHC 1242 (Admin)
2. *CG Fry v SSLUHC* [2024] EWCA Civ 730
3. *Friends of the Earth Ltd v SSLUHC* [2024] EWHC 2349
4. *Test Valley BC v Fiske* [2024] EWCA Civ 1541
5. *Tesco Stores Ltd v Stockport MBC & Anor* [2023] EHC 3154 (Admin)
6. *Lidl Great Britain v East Lindsey District Council & Aldi Stores Limited* [2024] EWHC 1641 (Admin)
7. *Tesco Stores Ltd v Reigate and Banstead* [2024] EWHC 2327 (Admin)
8. *Mead Realisations Ltd v The Secretary of State for levelling Up, Housing and Communities & Anor* [2024] EWHC 279 (Admin)



## **1. *R (Bradbury) v Brecon Beacons National Park Authority* [2024] EWHC 1242 (Admin)**

- Applications for agricultural buildings near River Wye SAC
- AAs required under Habitats Regime but were not before NPA
- Claim alleged a breach of Regs and Local Government Act
- Jay J decided breach of Reg 63(5) and s100D LGA, but refused to quash decisions
- Committee must form an evaluative judgment on the substance of AA itself. It is not a freestanding evaluative exercise
- Nb case on appeal to CA





## 2. *CG Fry v SSLUHC (CA)*

- Outline permission for 650 dwellings with reserved matters conditional approval for phase 3
- Council concerned no AA (potential harm to Ramsar site) and withheld discharge
- Appeal failed
- In court Fry argued Reg 63 read applied only to grant of permission not to conditions stage
- CA held: Regs mean that AA required at an “implementing decision”, which can be reserved matter approval or discharge of condition stage
- CA also held: Regs require AA to consider implications of the “project” not the part of project to which condition relates
- Comments
- Nb case on appeal to SC



## ***CG Fry v SSLUHC (CA) relating to statutory interpretation***

- Appellant argued Judge correct on “natural and ordinary meaning” interpretation but wrong then to reach different interpretation on a “purposive approach”
- CA said false to suggest dichotomy between “natural and ordinary meaning” and “purposive approach”
- Correct approach: “Legislation must be construed having regard to context and in the light of its purpose” – “a unified purpose”
- A combined approach
- No general precedence/hierarchy
- Difficulties and implications in identifying legislative purpose



### **3. FOE v SSLUHC, West Cumbrian Mining Ltd, Cumbria CC [2024] EWHC 2349 (Admin) 1/2**

- First case applying principles in *R (Finch) v SCC* [2024] UKSC 20
- Proposal: 60mt High Volatile coal to be blended with other coals from elsewhere to produce coke (an essential ingredient for producing steel in a blast furnace)
- SoS granted permission on basis that GHG emissions from burning extracted coal were not LSE
- Litigation focussed on how SoS dealt with emissions from extraction of coal and effects on climate



## **FOE v SSLUHC (HC) 2/2**

- Holgate J held that SoS had erred in law because:
  - He had applied a “sufficient causal connection” test which was not consistent with *Finch*
  - He took into account irrelevant factors eg intervening stages (blending with other coal) and fact that operator would have no control at later stages
- Common ground that burning of Whitehaven coal would be “an inevitable consequence” of extraction – Regs therefore required consideration of CHG emissions and effect on climate
- Judge rejected argument that produced coal would mean US coal remaining in ground and no net increase in GHG emissions such that burning of coal could not be a “significant” effect.
- Comments





## 4. *Test Valley BC v Fiske (CA)*

1. TVBC granted permission for a solar farm in 2017 with “substation” in description of development
2. S73 application submitted to conform with a later permission which included a larger substation, by not altering description of development but varying conditions including layout plan with no development indicated in central area
3. Appellant accepted following *Finney* that operative part of a s73 permission cannot alter operative part of original permission but argued that changed conditions could have that effect
4. Held: S73(2) only allows LPA to consider conditions and to impose different conditions from those imposed on previous permission ie clear must not go back on the “original permission” – appellant’s argument contrary to statutory scheme
5. Held: Reference to wide powers in ss70 and 72 did not help since they are not subject to requirement for LPA to consider terms of existing permission and not to alter operative part of it
6. Reference to *Wheatcroft* test did not help since that case deals with scope of development proposal during application process whereas s73 deals with variation of conditions on existing permission giving substantive development rights
7. The correct position is that the power under s73 is subject to restriction that it may not result in permission, the operative part and/or the conditions of which are inconsistent with operative part of earlier permission, either in terms of language used or its effect. There is no additional *fundamental alteration* restriction



## **5. Tesco Stores Ltd v Stockport MBC & Anor [2023] EHC 3154 (Admin)**

1. Tesco challenged grant of planning permission for a Lidl store in Stockport.
2. One of the main issues in the JR was meaning of the word “available” for the purposes of the (retail) sequential test (NPPF paragraph 91).
3. Lidl application was for out of centre retail use. There were other sites, both of which were sequentially preferable but subject of applications for rival retailers.
4. OR concluded neither alternative site was “available” or expected to become available within reasonable period.
5. Issue is whether “available” means available in principle of that broad type of use, or available to the particular applicant.
6. Tesco brought the JR. Failed in HC.
7. Appeal to Court of Appeal heard last week. Judgment awaited.



## 6. *Lidl v East Lindsey DC & Anor* [2024] EWHC 1641 (Admin)

1. Lidl and Aldi had within weeks of one another applied for planning permission for new supermarkets in Lincolnshire. Both outside the town centre.
2. LPA's retail consultant advised that each alone would not cause significant adverse impact to the town centre, but cumulatively they could.
3. Because two stores were competing for one planning permission, applying the line of authority derived from case of *R (Chelmsford Car and Commercial Ltd) v Chelmsford BC* [2006] 2 P&CR 12, on the facts of present case this was a situation where each rival proposal was a mandatory material consideration in the determination of the other, such that "direct consideration" was required of the merits.
4. Council determined the Aldi application first (granting permission), without undertaking any direct comparison with the Lidl application.
5. Court held that a fair and coherent comparison of the rival sites had not taken place here. Aldi's planning permission quashed.



## **7. *R (Tesco Stores Ltd) v Reigate and Banstead BC and Lidl GB* [2024] EWHC 2327 (Admin) 1/4**

### Facts:

- Lidl applied for permission for a store across road from Grade II war memorial
- Officers recommended refusal on design and heritage grounds notwithstanding benefits
- Members decided to grant planning permission
- Debate recorded and transcribed
- Tesco challenge: s66 LBCAA 1990 approach and reasons



## ***Tesco v Reigate and Banstead BC 2/4***

Summary of legal principles re reasons (mainly *Dover*):

- Duty might arise where fairness requires it
- Members can depart from officer recommendations but reasons for doing so need to be capable of articulation
- Intelligible and adequate on principal important controversial issues so no substantial (and genuine) doubt, but reasons can be briefly stated
- No duty to give reasons for reasons





## ***Tesco v Reigate and Banstead BC 3/4***

Approach to members discussion (mainly *Mid-Counties*)

- Questions of weight on planning matters for decision maker
- Decisions are by collective body, therefore caution in considering what individual members say during debate
- Focus of court on resolution rather than on discussions during meeting
- In this case, discussion was long with different member contributions but also officer oral advice



## *Tesco v Reigate and Banstead BC 4/4*

### Judgment:

- When read fairly and as a whole with officer advice no genuine doubt as to reasons for conclusions including that there were clear public benefits
- Members entitled to reach different view on the planning balance without reasons additional to the resolution
- Inherent in different conclusion that members attached greater weight to benefits than officers

### Useful to lawyers, officers and members:

- Understand courts approach
- See the rigour that court may adopt to the facts
- The risk of challenge remains



## **8. Mead Realisations v SSLUHC**

1. Inspector's refusal of planning permission for 75 dwellings on the grounds of flood risk.
2. Statutory challenge brought arguing Inspector had misinterpreted flood risk planning policy in relation to the sequential test. NPPF/174 says development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. SFRA provides basis for this.
3. PPG further defines "reasonably available sites" for these purposes (para 7-028).
4. Statutory challenge brought on basis that PPG improperly qualified NPPF, which was contrary to the proper hierarchy of policies.
5. Challenge dismissed in High Court. Appealed to Court of Appeal. Judgment in January 2025.
6. Court of Appeal held PPG did not exceed the ambit of the NPPF policy, but rather explained how it is meant to operate.
7. No legal principle that prevents national policy in the NPPF being amended or altered by the PPG. The legal status of both is essentially the same, though they have somewhat different purposes – with the NPPF the comprehensive general framework, and the PPG the national guidance which reinforces and explains that framework. No basis for treating PPG as being necessarily subservient or subordinate to the NPPF. Publication of the PPG does not need to be contemporaneous with the NPPF in order to explain its intention.



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