Landmark Chambers

Bristol Planning Law and Policy Conference- 31 March 2022
"Development and Climate Change - How can planning save the planet?"
Legal update

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Introduction

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- So going to:
- (1) Do a review of recent cases on climate change ("CC") in the last couple of years – to fit with theme of the conference;
- (2) Then do a more general case-law round-up of the last 12 months via:
  - (i) The 2 Supreme Court planning cases;
  - (ii) A top 7 Court of Appeal planning cases;
  - (iii) A brief overview of Planning Court cases.

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PART I – CLIMATE CHANGE CASE-LAW

Climate change: legislative and policy context

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- **Legislative framework**:
- **The Climate Change Act 2008 ("the CCA 2008"):**
- S. 1:
  - Originally enacted target - reduction by 2050 to at least 80% below 1990 level
  - 2019 Order (12 June 2019): amends target to by 2050 to at least 100% below 1990 level ("net zero")
- S. 4: duty to set carbon budgets for five-year periods; S.13: duty to prepare policies to achieve carbon budgets to 2050
- **The Carbon Budget Order 2021** (16 April 202)
  - Sixth carbon budget (covering 2033-2037) - Target: 78% reduction in emissions by 2035
  - This budget includes international aviation and shipping emissions for the first time
- **Policy updates**: UK's Nationally-determined contribution (or "NDC") (Dec 2020), Build Back Britain (March 2021), NPPF changes (July 2021, planning system should "*shape places in ways that contribute to radical reductions in greenhouse gas emissions*"), Jet Zero Consultation (July 2021), Decarbonising Transport: A Better, Greener Britain (July 2021), Net Zero Strategy: Build Back Greener (Oct 2021) and COP26 (Nov 2021)

Cases - introduction

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- A lot of excitement re two Dutch cases:
- (i) ***Urgenda Foundation v State of Netherlands:***
  - Claim vs Dutch Government to require it to do more to prevent global CC. Succeeded. The court concluded that the state has a duty to take CC mitigation measures due to the "*severity of the consequences of climate change and the great risk of climate change occurring*."
  - In reaching this conclusion, the court cited, *inter alia*: EU emissions reduction targets; principles under the European Convention on Human Rights ("ECHR"); the "*no harm*" principle of international law; the principle of fairness, the precautionary principle, and the sustainability principle embodied in the UN Framework Convention on Climate Change.
- (ii) ***Milieudefensie et al. v. Royal Dutch Shell plc*. –** similar case but vs private company succeeds (and see https://www.clientearth.org/latest/press-office/press/clientearth-starts-legal-action-against-shell-s-board-over-mismanagement-of-climate-risk/).

Relevance to English law?

- (i) Lots of excitement and anticipation for the English ***Urgenda;***
- (ii) Many thought it was ***R. (Plan B Earth) v Secretary of State for Transport*** [2020] P.T.S.R. 1446 – CA decision on the Airports National Policy Statement ("ANPS") - … but no … see below
- (iii) One big difference: Netherlands monist system, UK dualist – so in UK international law generally not directly appliable/enforceable law unless incorporated into domestic law. This was one of the issues in ***Plan B*** as at date of ANPS designation the Paris Agreement not transposed via CCA 2008 or otherwise.
- (iv) Direct citation of ***Urgenda*** in English Courts – only three times in ***R (Spurrier) v SST*** [2020] P.T.S.R. 240 (that is the ***Plan B*** ANPS JR at first instance). Plus: also in ***Plan B v Prime Minister*** and ***Friends of the Earth Ltd (UK Export Finance)*** see below.

Climate change cases

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- A number of high-profile recent JR cases come before the English Courts focussing on CC, most notably:
  1. ***R. (Friends of the Earth Ltd) v Heathrow Airport Ltd*** [2021] P.T.S.R. 190 (SC, JRs of ANPS, favouring Heathrow expansion);
  2. ***R. (Packham) v Secretary of State for Transport*** [2021] J.P.L. 323 (CA, JR of decision of Government to continue with HS2 following independent review);
  3. ***R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy*** [2020] EWHC 1303 (Admin) (HC, JR of Development Consent Order ("DCO") granted under Planning Act 2008 ("the PA 2008") for gas fired generating units at Drax Power Station);
  4. ***R (Elliott-Smith) v Secretary of State for Business, Energy and Industrial Strategy*** [2021] EWHC 1633 (Admin) (HC, JR of decision to create the UK Emissions Trading System to replace the EU ETS).

Climate change cases

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5. R. (Transport Action Network Ltd) v Secretary of State for Transport [2021] EWHC 2095 (Admin) (HC, JR of Road Investment Strategy, RIS)

6. R (Plan B) v Prime Minister [2021] EWHC 3469 (Admin) (HC JR of Government response to CC);

7. R (Finch) v Surrey CC [2022] EWCA Civ 187 (CA, indirect emissions and EIA);

8. R. (Friends of the Earth Ltd) v Secretary of State for International Trade/Export Credits Guarantee Department (UK Export Finance) [2022] EWHC 568 (Admin) (HC, JR of decision to provide export finance and support in relation to a liquefied natural gas ("LNG") project in Mozambique).

Climate change cases

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(1) R (Friends of the Earth Ltd and Plan B Earth) v SST [2021] PTSR 190

- Heathrow litigation
- 2018 ANPS made the PA 2008, dealing with Nationally Significant Infrastructure Projects ("NSIPs")
- Preferred Heathrow 3R as answer to SE need for airport expansion
- Sets policy framework for future DCO under PA 2008
- 6 JRs launched of the ANPS, several of these including those brought by Plan B and Friends of the Earth ("FoE") on CC grounds, including failure to have regard to the (at time of ANPS designation, unincorporated) Paris Agreement.

Climate change cases

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- In Div Ct – CC grounds all fail – ruled not arguable, pta for JR refused (***Spurrier***);
- In CA CC grounds success in entirety – held the Secretary of State ("SoS") failed to have regard to Paris Agreement, and this rendered ANPS unlawful despite Paris Agreement being unincorporated international agreement at date of designation (NB the Net Zero order came post ANPS designation – see below);
- Much excitement … the English ***Urgenda …?***
- Cooler heads: see "*Flights of fancy*", David Campbell, L.Q.R. 2020, 528-534
- Overturned comprehensively by SC: see ***R. (Friends of the Earth Ltd) v Heathrow Airport Ltd*** [2021] 2 All E.R. 967:
  - (i) SoS did have regard to Paris Agreement, but determined not to assess ANPS vs it as unincorporated;
  - (ii) Also ANPS ensured in any event at DCO stage judge scheme vs any revised CC targets that later gave effect to Paris Agreement.

Chronology

12/12/2015	Paris Agreement adopted
10/2016	CCC advise not to yet amend targets in CCA 2008 for Paris Agreement
18/12/2016	UK ratify Paris Agreement
Early 2018	CCC invite Government to seek further advice on amending after IPCC's report
26/6/2018	SoS designates the ANPS
8/12/2018	Report of Intergovernmental Panel on Climate Change on Paris Agreement
7/2018	6 JRs of the ANPS including by Plan B and FoE on Paris Agreement grounds
26/6/2019	The CCA 2008 (2050 Target Amendment) Order 2019
27/2/2020	CA judgment in ***Plan B*** case – failed to take into account Paris Agreement
31/7/2020	CA give judgment in ***Packham*** (2 of same 2 CA judges) … retreat begins …
16/12/2020	SC overturn CA decision in ***Plan B***

Pre- 2019 Order JRs focussed on not having regard to net zero by 2050 target, thereafter on other aspects of Paris Agreement said not to have been transposed by the 2019 Order.

Climate change cases

(2) R (Packham) v Secretary of State for Transport ("SST") [2021] Env LR 10

- Seen on chronology came between CA and SC in Heathrow litigation
- 2 of same 3 judges in ***Plan B,*** reinterpret and retreat from that decision …
- CA find the Government did not fail to consider the implications of the Paris Agreement and the CCA 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"* [87].

Climate change cases

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

- Held by HC:
  - (1) That in making decision to set the Road Investment Strategy ("RIS") 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.
  - (2) No breach of the requirement in s.3(5) of the Infrastructure Act 2015 which requires the SST, when setting or varying an RIS, to have regard, in particular, to the effect of the RIS on, inter alia, the environment. S 3(5) only refers to the environment "*in very broad terms*". It does not impose any duty to treat either subject in a particular way or to require compliance e.g. with a standard or target. It does not require the SST to have regard to any topic which could fall within that broad subject. It is a matter for the judgment of the SST to determine the nature and extent of the environment topics to which he has regard. This is especially so as the RIS is a document of a high-level, strategic nature.

Climate change cases

(4) R (ClientEarth) v SSBEIS [2021] PTSR 1400

- HC held:
  - Decision to grant DCO under PA 2008 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 greenhouse gas ("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.

Climate change cases

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

- The UK Emissions Trading Scheme ("ETS"), which replaced the EU ETS after Brexit, HC held:
  - (1) SoS did not unlawfully fail to take account of the Paris Agreement (albeit not expressly referencing it), and
  - (2) The ETS served the statutory purpose in CCA 2008, s.44 of "*limiting or encouraging the limitation of activities"* causing GHG emissions.

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(6) R (Plan B Earth & Others) v Prime Minister

- Alleged breaches of the CCA 2008 s.13 or s.58, or a breach of ECHR art. 2 or art. 8, read by themselves or in conjunction with art.14. The grounds were that the Government had failed to:
  - (1) take practical and effective measures to align UK GHG to the Paris Agreement temperature limit of 1.5°C above pre-industrial levels;
  - (2) take measures to prepare for the impacts of CC or to support others to do so;
  - (3) take measures to align UK financial flows to the Paris Agreement temperature limit; or
  - (4) implement the "*polluter pays*" principle or implement a framework to compensate those suffering CC loss and damage, whether in the UK or beyond.
- Permission refused.

Climate change cases: *Finch 1*

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(7) R (Finch) v Surrey CC

- JR of commercial extraction of oil at Horse Hill in Surrey.
- The main issue: should EIA have included assessment of the downstream refinement, distribution and sale of the oil in terms of GHG emissions?
- Holgate J dismissed the application for JR against the LPA's decision, finding that the GHG emissions from future combustion of the refined oil products were "*as a matter of law, incapable of falling within the scope of the [requisite] EIA"* [126].
- Holgate J also held that the "*true legal test*" of whether an effect constitutes an indirect likely significant effect of the development on the environment "*is whether an effect on the environment is an effect of the development for which planning permission is sought*" [101].
- C appealed. Appeal failed: 2:1 in CA

Climate change cases: *Finch 2*

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- At [15] of the judgment Lindblom LJ in CA , identified the following relevant principles:
  - (1) While a broad and purposive approach to the interpretation of EU legislation is appropriate, it must always respect the words actually used;
  - (2) The legislation for EIA is directed at a project of development. The concept of a "*project*" is one to which a broad interpretation should be applied;
  - (3) An assessment of the LSE "*of the project on the environment*" under the EIA Directive extends to the effects of the use of the works as well as their construction;
  - (4) An EIA must address the particular development under consideration, not some further or different project;
  - (5) The existence and nature of "*indirect", "secondary"* or "*cumulative*" effects will always depend on the particular facts and circumstances of the development under consideration;
  - (6) Where an EIA has to address the "*indirect"* effects of a proposed development, it must include a sufficient assessment of such effects;
  - (7) Establishing what information should be included in an environmental statement, and whether that information is adequate, is for the relevant planning authority, subject to the court's jurisdiction on conventional public law grounds e.g. ***Wednesbury***.

Climate change cases: *Finch 3*

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- All three Lord Justices held that:
  - (1) The question of whether an environmental impact was an effect of the development for which planning permission was sought was not a "*true legal test*" ([41], [95] and [141]).
  - (2) Rather, consideration needs to be given to the degree of connection between the development and its putative effects.
  - (3) Holgate J wrong to hold that the GHG emissions from future combustion of the refined oil products were, as a matter of law, incapable of falling within the scope of EIA ([43]).
  - (4) Instead the question of whether the emissions of the oil extraction needed to be assessed was one of fact and evaluative judgment for the planning authority ([57]).
  - (5) The downstream emissions of hydrocarbon development might properly be regarded as indirect environmental effects, depending on the specifics of the project ([67]).
- In the particular circumstances of this case, Lindblom LJ held (Lewison LJ agreed), the Council's decision to exclude downstream GHG emissions from the EIA was lawful.
- Moylan LJ dissented.

Climate change cases

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- ***(8) Friends of the Earth (UK Export Finance)***
  - JR of decision to provide up to USD 1.15 billion in export finance and support in relation to a liquefied natural gas ("LNG") project in Mozambique ("the Project").
  - Alleged:
  - (i) The decision was based on an error of law or fact, namely that the Project and its funding was compatible with the UK's commitments under the Paris Climate Change Agreement and/or assisted Mozambique to achieve its commitments under the Paris Agreement and/or
  - (ii) The decision was otherwise unlawful in so far as it was reached without regard to essential relevant considerations in reaching the view that funding the Project aligned with the UK and Mozambique's obligations under the Paris Agreement.
  - Failed.

Climate change cases

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So all the above CC cases ultimately failed … but …

R (Vince & Others) v SSBEIS (CO/1832/2020)

- JR claim against unlawful failure by SoS to review the Energy NPSs designated in 2011 in the light of changes in CC policy, including Net Zero.
- Settled prior to hearing due to announcement by SoS that it would consult on revised Energy NPSs.
- Govt. deny the JR led to review, say intended to review anyway.
- Consultation commenced on 6 September 2021 (and closed on 29 November 2021): https://www.gov.uk/government/consultations/planning-for-new-energy-infrastructure-review-of-energy-national-policy-statements.

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PART 2: CASE-LAW UPDATE – THE LAST YEAR

Supreme Court cases (1)

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- Two planning Supreme Court cases in the last year:
- (1) ***CPRE Kent v Secretary of State for Communities and Local Government*** [2021] 1 WLR 4168:
- CPRE sought to challenge the position established in cases such as ***In re Leach*** [2001] CP Rep 97; ***R (Mount Cook) v Westminster CC*** [2017] PTSR 1166 and ***R (Luton BC) v Central Bedfordshire Council*** [2015] 2 P & CR 19 that at the permission stage, if permission refused, multiple defending parties (Defendants(s) and Interest Party(ies)) *prima facie* entitled to seek costs of Acknowledgement of Service/summary grounds of defence against claimant(s).
- CPRE argued this was inconsistent with ***Bolton Metropolitan DC v SSE (Practice Note)*** [1995] 1 WLR 1176 to the effect that where there is multiple representation in a substantive planning JR (or statutory review), the losing party will not normally be required to pay more than one set of costs.
- CPRE failed. ***Mount Cook*** still governs law and practice on permission costs.

Supreme Court cases (2)

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- ***(2) R. (Fylde Coast Farms Ltd (formerly Oyston Estates Ltd)) v Fylde BC*** [2021] 4 All ER 381:
  - SC decision on time limits for JR under the TCPA 1990 s 61N – challenges to Neighbourhood Plans:
  - Making a NP is a 7-step process, and for steps 5, 6 and 7:
    - 5: consideration of the examiner's report by the authority
    - 6: the holding of a referendum on the proposed plan or order
    - 7: the making of the plan or order.
- JRs required within 6 weeks of each of these steps – cannot wait and challenge for any errors in stages 5 and 6 by a JR of stage 7.

Top 7 Court of Appeal cases

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- **(1) *Finch* –** see above.
- **(2) *R. (Hampshire CC) v Blackbushe Airport Ltd* [2022] Q.B. 103**
  - Meaning of "*curtilage*" under para. 6(2)(b) of Schedule 2 to the Commons Act 2006 Act, but wider implications;
  - Question was whether the land in question was so intimately connected with the building as to lead to the conclusion that the land formed part and parcel of the building;
  - Upheld HC decision quashing Inspector's decision finding that all of the airport operational land was within curtilage of the terminal;
  - Inspector had applied wrong test namely whether the operational land and the terminal building were part and parcel of the same entity such that there was functional equivalence between them.

Top 7 Court of Appeal cases

Landmark Chambers

- **(3) *R. (Hudson) v Windsor and Maidenhead RBC* [2021] 1 W.L.R. 5588**
  - PP granted for a holiday village without undertaking an AA under the Habitats Regulations. It was conceded that there should have been an AA;
  - Judge below dismissed claim on the basis that she was required to refuse to grant relief by s. 31(2A) of the Senior Courts Act 1981 since she was satisfied that it was "*highly likely that the outcome . . . would not have been substantially different*" if an AA had been undertaken;
  - C appealed arguing that EU law required a different (and higher test) – namely whether it had been shown that the local authority's decision would have been the same if an AA had been carried out;
  - Hypothetical difference between tests, but no practical difference as factors to be considered the same;
  - Appeal dismissed.

Top 7 Court of Appeal cases

Landmark Chambers

- ***(4) R. (Flynn) v Southwark LBC [2021] EWCA Civ 827***
  - JR of the grant of PP for the major redevelopment of the Elephant and Castle. The scheme will deliver almost 1000 new homes of which 116 will be for social rent.
  - The challenge, brought by the C on behalf of the 35% campaign group, focussed on the delivery social housing and on the issue of the scope of members' delegation to officers to negotiate a s.106 agreement needed to deliver the social housing.
  - Main points of interest is what the CA had to say about the relationship between: (i) the resolution to grant, (ii) the officer's report to committee and (iii) the scope of the delegation from members to officers to negotiate s.106 agreements ([41]-[46]).
  - Although the CA stressed that no novel point of law arose, the decision provides useful guidance on the approach to be taken to construing the members' delegation of legal authority to officers.

Top 7 Court of Appeal cases

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- ***(5) McGaw v Welsh Ministers [2021] EWCA Civ 976***
  - Town and Country Planning (General Permitted Development) Order 1995 art.1(3) *"[u]nless the context otherwise requires, any reference in this Order to the height of a building … shall be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building … in question …"* (emphasis added)
  - Held:
  - (1) The ground "*immediately adjacent*" to the building did not have to be within the curtilage of the applicant's land.
  - (2) Where the proposed building was to be constructed flush with the boundary wall, the ground immediately adjacent to it for the purpose of the measurement was the neighbour's land.

Top 7 Court of Appeal cases

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- ***(6) Royale Parks Ltd v SSHCLG [2022] P.T.S.R. 184:***
  - Part of a caravan site was subject to a PP with conditions that the caravans and chalets in that area were to be occupied for holiday purposes only and should not be occupied as a person's sole or main residence.
  - Conditions breached, in the case of at least some of the units, for over 10 years.
  - Held where specific parts of an area of land had been used in breach of planning conditions for more than 10 years and a LPA had granted LDCs in respect of them, it was a question of fact and degree whether the breach of planning condition applied to the entirety of the relevant land or whether specific areas could sensibly be regarded as being the subject of a "*partial breach*" only.
  - In deciding is LDC should be granted in respect of the whole area, the question was what the particular breach was and what could properly be enforced against.
  - That approach properly balanced the rights of all concerned, including the important public interest at stake.
  - Decision not to grant LDC for whole site upheld.

Top 7 Court of Appeal cases

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- ***(7) R. (Rights: Community: Action) v SSHCLG [2021] EWCA Civ 1954***
  - Neither the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 nor the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 or the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 set the "*framework for future development consent*" within the meaning of Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment art.3(4).
  - Therefore, the SoS had not acted unlawfully in making those statutory instruments in order to adjust permitted development rights and to remove certain changes of use from the scope of development control without undertaking a strategic environmental assessment under the Directive and the Environmental Assessment of Plans and Programmes Regulations 2004.

Round-up of High Court cases

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- **(1) DELAY:**
  - ***R. (Croyde Area Residents Association) v North Devon DC*** [2021] P.T.S.R. 1514
    - JR of PP granted in 2014;
    - Extension of time granted and JR allowed more than 6 years late;
    - PP clearly granted in error;
    - But time extended despite developer having obtained LDC based on the PP and LDC not having itself been challenged in 6 weeks allowed under Planning Acts.
  - LDC obtained based on PP did not bar claim (see also ***Ocado*** below on the limits of the protection a LDC provides …).

Round-up of High Court cases

Landmark Chambers

- **(2) EIA:**
  - ***(1) Swire v Ashford BC*** [2021] Env. L.R. 29: screening opinions don't need to be kept under constant review;
  - ***(2) Swire v Canterbury CC*** [2022] EWHC 390 (Admin) multiple claims: (i) founded on the premise that the approval of a masterplan (pursuant to a condition) was unlawful because it strayed beyond the details approved in a parameter plan at the outline PP stage, and which had been subject to EIA; (ii) challenged a decision under s. 96A of the TCPA 1990 to vary conditions of the outline PP;
  - ***(3) R. (Ashchurch RPC) v Tewkesbury BC*** [2022] EWHC 16 (Admin) unsuccessful challenge of the grant of PP for a road bridge over the Bristol to Birmingham railway, which was required for access to a future garden town for 826 homes. One of grounds was EIA screening relating to the bridge concluded that it would not be likely to have significant effects on the environment and did not consider the environmental effects of the wider large-scale development. Salami-slicing allegation rejected. Allegation of bias in EIA decision-making also rejected.

Round-up of High Court cases

Landmark Chambers

- **(3) GREEN BELT**
  - ***Sefton MBC v SSCHLG*** [2021] P.T.S.R.: Para. 144 of the NPPF – Green Belt.
    - LPAs not required to allocate substantial weight to each element of harm as a mathematical exercise, with each tranche of substantial weight then to be added to a balance.
    - The exercise of planning judgement was a single exercise of planning judgement to assess whether there were very special circumstances which justified the grant of permission notwithstanding the particular importance of the green belt.
  - See also the ***Cherwell*** case below on Green Belt release via Development Plans and housing need.

Round-up of High Court cases

Landmark Chambers

- **(4) HERITAGE:**
  - ***(i) R. (Save Stonehenge World Heritage Site Ltd) v SST*** [2022] P.T.S.R. 74 – quashing of the A303 DCO.
  - ***(ii) Juden v Tower Hamlets LBC*** [2021] EWHC 1368 (Admin) LPA had misinterpreted the NPPF para.175c in appraising the potential loss of a veteran tree when considering a proposed development. It had included the developer's proposed compensation strategy as forming part of wholly exceptional circumstances that outweighed the risk of loss of the tree, whereas the existence of wholly exceptional circumstances and a suitable compensation strategy were separate and cumulative requirements of para.175c.

Round-up of High Court cases

Landmark Chambers

- **(5) PLAN CHALLENGES:**
  - (i) ***Cherwell Development Watch Alliance v Cherwell DC*** [2021] EWHC 2190 (Admin) – unsuccessful s. 113 challenge to Local Plan Review;
  - (ii) ***R. (Sav Development Ltd) v Tower Hamlets LBC*** [2021] EWHC 3211 (Admin) – unsuccessful challenge to affordable housing SPD;
  - (iii) ***R. (Park Lane Homes (South East) Ltd) v Rother DC*** [2022] EWHC 485 (Admin) – unsuccessful challenge (as pretty much always) to Neighbourhood Plan.

Round-up of High Court cases

Landmark Chambers

- **(6) PA 2008 CASES, NSIPs:**
  - (i) See ***Stonehenge*** above;
  - (ii) ***EFW Group Ltd v Secretary of State for Business, Energy and Industrial Strategy*** [2021] EWHC 2697 (Admin) - Where an application for a DCO included both a project which fell within the scope of a national policy statement and a project in respect of which there was no applicable NPS, the first project should be assessed under the framework in the PA 2008 s.104 while the second should be assessed under the s.105 framework. It was an error to assess both projects under s.104, even after a direction had been issued under s.35 requiring the second project to be treated as a development for which a DCO was required.
  - (iii) ***Tidal Lagoon (Swansea Bay) Plc v Secretary of State for Business, Energy and Industrial Strategy*** [2021] EWHC 3170 (Admin). DCO had not been implemented in time.

Round-up of High Court cases

Landmark Chambers

- **(7) CIL:**
- A number of cases on CIL Regulations, no time to deal in detail:
  1. ***R. (Trent) v Hertsmere BC*** [2021] P.T.S.R. 1537 - reg.65(1) requirement to issue the notice as soon as practicable after the grant of planning permission
  2. ***Lambeth LBC v SSHCLG*** [2021] EWHC 1459 (Admin) – late payments
  3. ***Gardiner v Hertsmere BC*** [2021] P.T.S.R. 1761 – self-build exemptions
  4. ***Stonewater Ltd v Wealden DC*** [2021] EWHC 2750 (Admin) | [2021] – social housing
  5. ***R. (on the application of Heronslea (Bushey 4) Ltd) v SSCHLG*** [2022] EWHC 96 (Admin) – late payments

Round-up of High Court cases

Landmark Chambers

- **(8) HABITATS:**

- ***R. (Wyatt) v Fareham BC*** [2021] EWHC 1434 (Admin)
  - Unsuccessful JR to PP relying on NE's Solent nutrient neutrality guidance;
  - Argued not compliant with Habitats Regulations;
  - Going to CA.

Round-up of High Court cases

Landmark Chambers

- **(9): OTHER MATTERS:**
  1. ***Choiceplace Properties Ltd v SSHCLG*** [2021] EWHC 1070 (Admin) – **get your plans right!**: PP for the erection of a three-storey block of flats, subject to condition that the development be carried out in accordance with approved plans, could not be lawfully implemented when the approved plan showing a street scene drawing had not been drawn to the correct scale. The drawing inaccurately showed that the proposed development would be lower in height than neighbouring buildings, when in fact it would be higher. The drawing could not be regarded as only illustrative when it was intended to show the relationship of the proposed development to the existing heights of adjacent buildings. If built, the development would not be in accordance with the plan.
  2. ***R. (Ocado Retail Ltd) v Islington LBC*** [2021] P.T.S.R. 1833 – important decision on ability of LPA to revoke LDCs where material information withheld.

Round-up of High Court cases

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- 3. ***Sage v SSHCLG*** [2021] EWHC 2885 (Admin): s. 288 challenge to refusal of LDC for an outbuilding used as gym for PT's business. Most over-hyped decision of the year?

- 4. ***R. (Lewis) v Welsh Ministers*** [2022] EWHC 450 (Admin): JR of approval of outline business case. The definition of "*an Aarhus Convention Claim*" in CPR r.45.41(2)(a) required attention to be focused on the nature of the claim rather than on the nature of the decision being challenged. Where a ground which brought the Aarhus Convention costs limit into operation was included in a claim in good faith, it was not appropriate to distinguish between the costs attributable to that ground and those attributable to other grounds.

Round-up of High Court cases

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- Maddest decision of the year ..
- ***R. (Swainsthorpe Parish Council) v Norfolk CC*** [2021] EWHC 1014 (Admin)
  - JR granted of CC response on a planning application for a commercial development because contrary statutory consultation requirements in the Planning and Compulsory Purchase Act 2004 s.54 and in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
  - The CC had been consulted in its capacity as the local highway authority and erred by giving its wider views on the economic benefits of the proposed development.
  - JR of responses to planning applications?! Really?!
  - Surely there is an alternative remedy, to point this out to LPA and suggest reduced or no weight to the response in so far as went beyond transport …
  - This is a recipe for satellite planning litigation …

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Questions?

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Thank you for listening

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