

# Climate Change as a Material Consideration: Dead Letter or Burning Issue?

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# Government Policy



# Government Policy

01

## Build Back Greener

'Net Zero Strategy: Build Back Greener'

October 2021

02

## NPPF

Last updated:  
December 2023

Chapter 14 – 'Meeting the  
challenge of climate change,  
flooding and coastal change'

03

## NPPG

Last updated:  
March 2019



# Net Zero Strategy: Build Back Greener

- Climate Change Act 2008, s.14
- SOS must lay before Parliament a report “setting out proposals and policies for meeting... carbon budgets”
- High-level policy targets; builds on the 10-point plan for a Green Industrial Revolution



# Net Zero Strategy: Build Back Greener



- By the middle of this century “the world has to reduce emissions to as close to zero as possible”
- Delivering this objective “requires urgent global action, including ending coal fired power generation...”
- Long-term plan for a transition that will happen “over the next three decades”
- Many of the policies will be phased in “over the next decade or longer”
- Explains how emissions will be reduced, and transition supported, across the economy

# Net Zero Strategy: Build Back Greener

- Fuel supply and hydrogen – will significantly reduce emissions from traditional oil/gas supplies
- Heat and buildings – improving the energy efficiency of housing and non-domestic properties
- Recognises the importance of the planning system



# Net Zero Strategy: Build Back Greener



- How to support the transition across the economy?
- What is the role of planning?
- We “intend to review the [NPPF]... to make sure it contributes to climate change mitigation and adaptation as fully as possible”

# Achieving Net Zero (41<sup>st</sup> Report, 2021-22)

- House of Commons Public Accounts Committee, Achieving Net Zero: Follow Up (41<sup>st</sup> report of session 2021-2022)
- Government has “no clear plan” for funding Net Zero
- Lack of urgency in working with local government to achieve it





# NPPF (2023)



- Since 2012, sustainable development has included “mitigating and adapting to climate change, including moving to a low carbon economy) (§8(c)).
- Strategic policies: incl. measures “to address climate change mitigation and adaptation” (§20(d)).

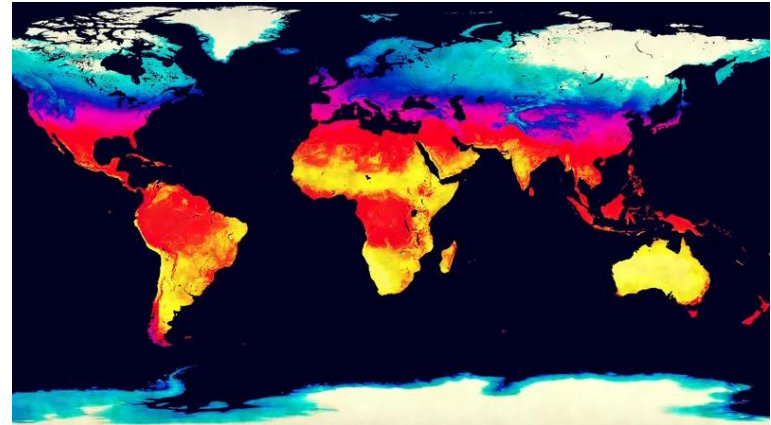
# NPPF (2023)



- Chapter 14 – meeting the challenge of climate change, flooding, coastal change
- Planning system should support the transition to a low-carbon future (§157)
- Plans should take a proactive approach to mitigating/adapting (§158)

# NPPF (2023)

- Plans should help increase the use/supply of renewable and low-carbon energy (§160)
- For flood risk and sequential testing, plans should take account of climate change re flood risk



# NPPF (2023)



- New development should take account of landform, layout etc to minimise energy consumption (§162(b)).
- Special rules on need when determining renewable/low carbon development (§163).
- Energy efficiency and low carbon heating improvements –significant weight (§164).

# And the PPG...

- Climate change last updated 15.3.19
- Effective spatial planning helps influence the emission of GHGs
- Addressing climate change a core land use principle; local plans should reflect (see also s.19A PCPA 04)
- Gives mitigation/adaptation examples
- *Mead Realisations Ltd* [2024] EWHC 279 (Admin) (Holgate J)





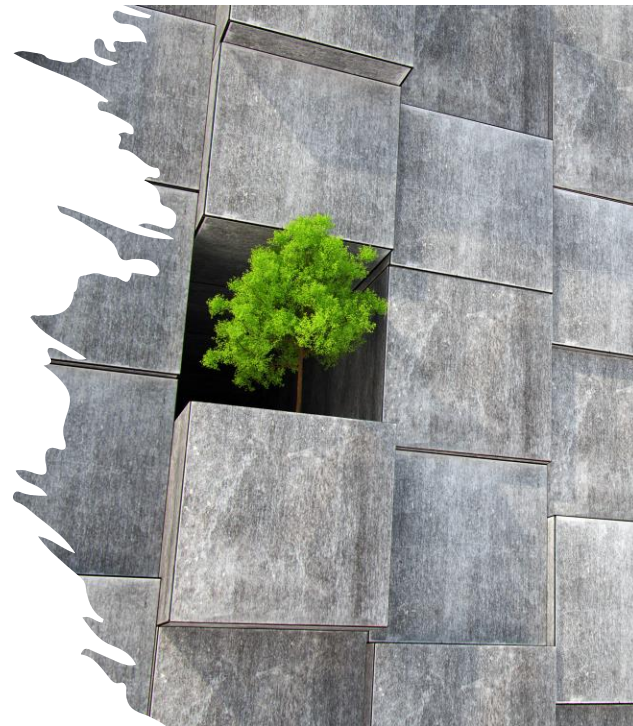
# The evolving legal position according to the English courts



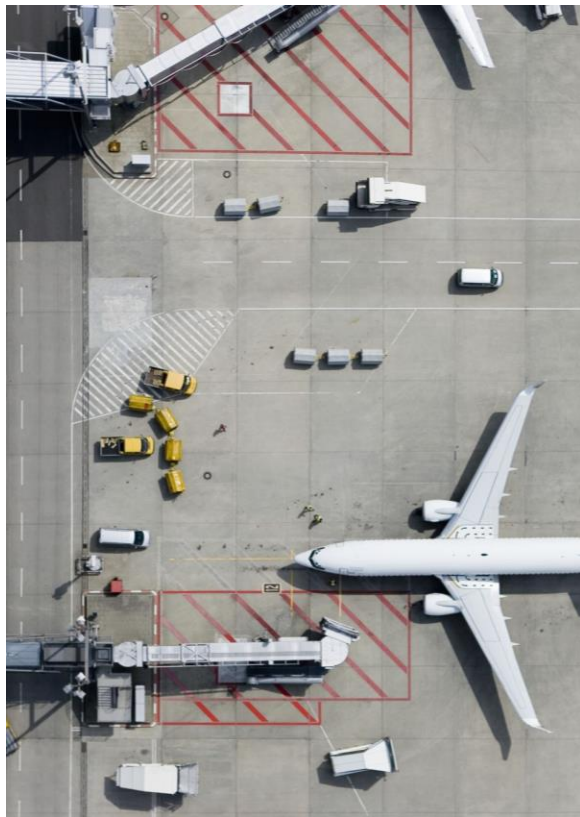
# Pre-Climate Change Act 2008

*R (on the application of Littlewood) v Bassetlaw DC*  
[2009] Env LR 21

- Concerned a pre-cast concrete manufacturing facility.
- Argued that the local authority failed to consider the impact of the development on climate change.
- Held at §67 that climate change had not been considered in the environmental statement. However, this did not render it so deficient that it could not reasonably be described as an environmental statement. Further, the issue had not previously been raised with the local authority by anyone.







# Post-Climate Change Act 2008 – Initial Airport Cases

Various Airport Cases brought in reliance on CCA.

Climate Change Committee Report 2009 concluded that to meet CCA targets, air traffic movements in the UK should not increase by more than 55% .

Expansion policy set out in Air Transport White Paper 2003, which pre-dated CCA and CCCR, was significantly more than a 55% increase.

Challenges brought on the basis that the disconnect between ATWP and CCA was a material consideration for decision making.



# Pre-Climate Change Act 2008

Cases brought between 2009-2011 in respect of various types of expansion at Stanstead, Heathrow, City and Bristol airports.

*Barbone v Secretary of State for Transport* [2009] EWHC 463 (Admin)

*R (on the application of Hillingdon LBC) v Secretary of State for Transport* [2010] EWHC 626 (Admin)

*R (Griffin) v Newham LBC* [2011] EWHC 53 (Admin)

*R (Stop Bristol Airport Expansion) v North Somerset Council* [2011] EWHC 3356 (Admin)

Settled position by 2011 that the ATWP remained appropriate policy statement and the global effect of aviation emissions was not a matter for local planning authorities.



# Infrastructure – called in decisions

The Secretary of State for Housing, Communities and Local Government refused permission for a coal mine in Northumbria on the basis that the impact of greenhouse gas emissions was contrary to combatting climate change.

- High Court quashed decision in 2018, and Secretary of State again refused planning permission in 2020.

In *ClientEarth v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWCA Civ 43, the Secretary of State for Business, Energy and Industrial Strategy granted permission for a gas-powered plant on the basis that relevant policy had already considered climate change impacts.

- Court of Appeal found no error in decision, albeit held that the question was one of misinterpretation and misapplication.



# Infrastructure – downstream emissions

*R (on the application of Finch) v Surrey CC*  
[2022] PTSR 958 concerned permission to  
expand a crude oil site at Horse Hill Well.

The Court of Appeal rejected an argument  
that downstream greenhouse gas emissions  
which would be emitted when the crude oil  
was used by consumers should have been  
considered as part of climate considerations.

Judgment from the Supreme Court is  
awaited.



# Local Planning - Medway

*R (McLennan) v Medway Council* [2019] PTSR 2025

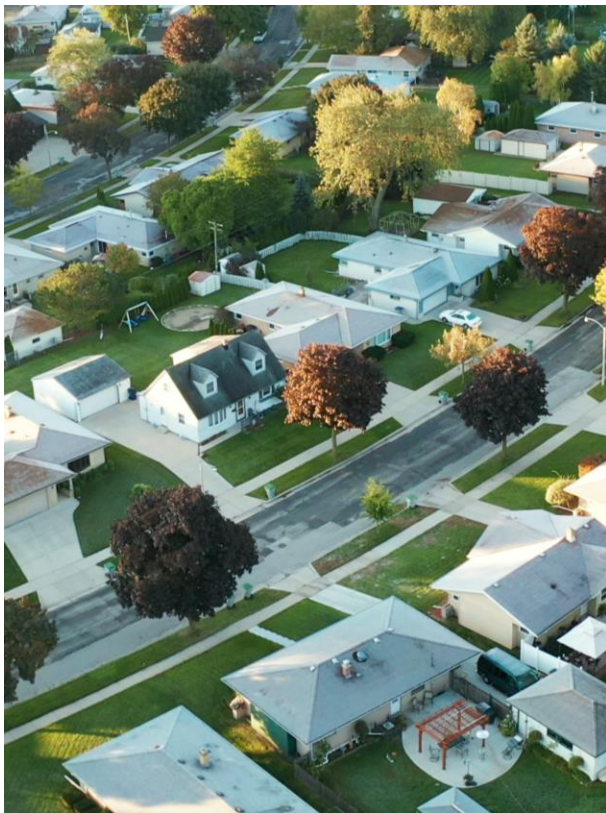
Claimant brought claim for judicial review of decision to grant planning permission for neighbour's extension which would overshadow Claimant's solar panels.

Held that mitigation of climate change was a material planning consideration.

Local authority was not entitled to reject the effect that another development might have on a renewable energy system as an immaterial consideration.







# Local Planning – South Oxfordshire

In 2021, Bioabundance CIC challenged South Oxfordshire DC's local plan proposal to build 24,000 new homes by 2035.

Argued that the plan did not pay adequate regard to the effect of the high housing numbers on climate change.

The High Court refused permission the papers, and again at an oral hearing, concluding that the claim was unarguable.

# Recent Airport Cases

Two recent decisions regarding airports.

*Bristol Airport Action Network Co-ordinating Committee v Secretary of State for Levelling Up, Housing and Communities* [2023] PTSR 853

- Decision-maker entitled to find that aviation emissions were not a material consideration on the basis that they were not so significant that they would have a material impact on Government's ability to meet climate change targets.

*Friends of the Earth v Heathrow Airport* [2021] PTSR 190

- Divisional court had dismissed claims but held that Secretary of State would clearly have erred if he had not taken into account the CCA 2008 targets.
- Court of Appeal allowed appeal on the basis that Paris Agreement was a material consideration and had not been taken into account.
- Supreme Court overturned Court of Appeal, albeit on the basis that the Paris Agreement had in fact been considered, regardless of any findings on its materiality.



# Conclusion

Issues relating to climate change can be material considerations.

National policy should still be afforded significant weight, especially in circumstances where issues of climate change, sustainability, and other environmental matters have been expressly considered in said policy.

Weight to be afforded to climate change matters likely to differ according to applicable policies/guidance.

Can be a material consideration even in respect of individual local planning matters.

