cornerstone barristers

Case Law Update

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01

Supreme Court

CG Fry & Son Ltd v Secretary of State for Levelling Up, Housing and Communities [2025] UKSC 35

CG Fry & Son Ltd v Secretary of State for Levelling Up, Housing and Communities [2025] UKSC 35

Factual background:

- Somerset Council granted outline planning permission for a mixed-used development including 650 dwellings and commercial and community uses.
- After outline planning permission but before the discharge of conditions - Natural England advice on nutrient neutrality.
- Introduction of phosphates arising from the development into the water systems feeding the Somerset Levels and the effect that may have on the Somerset Levels and Moors Ramsar Site.

Protection of Ramsar Sites

- Not protected under the Habitats Regulations but given the same level of protection through the NPPF.
- Habitats Regulations reg.63(1) – duty to conduct an appropriate assessment. Regulation 63(5): ”the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site …”

CG Fry & Son Ltd v Secretary of State for Levelling Up, Housing and Communities [2025] UKSC 35

The issues:

1. Is an appropriate assessment required before LPAs decide to discharge conditions requiring the approval of reserved matters in a grant of outline planning permission for that development?

2. The impact of a policy adopted by the Government to protect Ramsar sites on the grant of outline planning permission.

The Decision

01

Habitats Regulations

- Strong protective purpose of the Habitats Regulations, underpinned by the precautionary principle.
- This would be undermined if an appropriate assessment could not be undertaken at later stages of the process.

02

Ramsar Sites

- Protected in the NPPF.
- Outline planning permission cannot be revisited. Conditions are confined to consideration of matters related to their subject.
- Therefore, cannot consider impact on Ramsar at discharge of conditions stage, unless the condition fairly related to it.

Consequences?

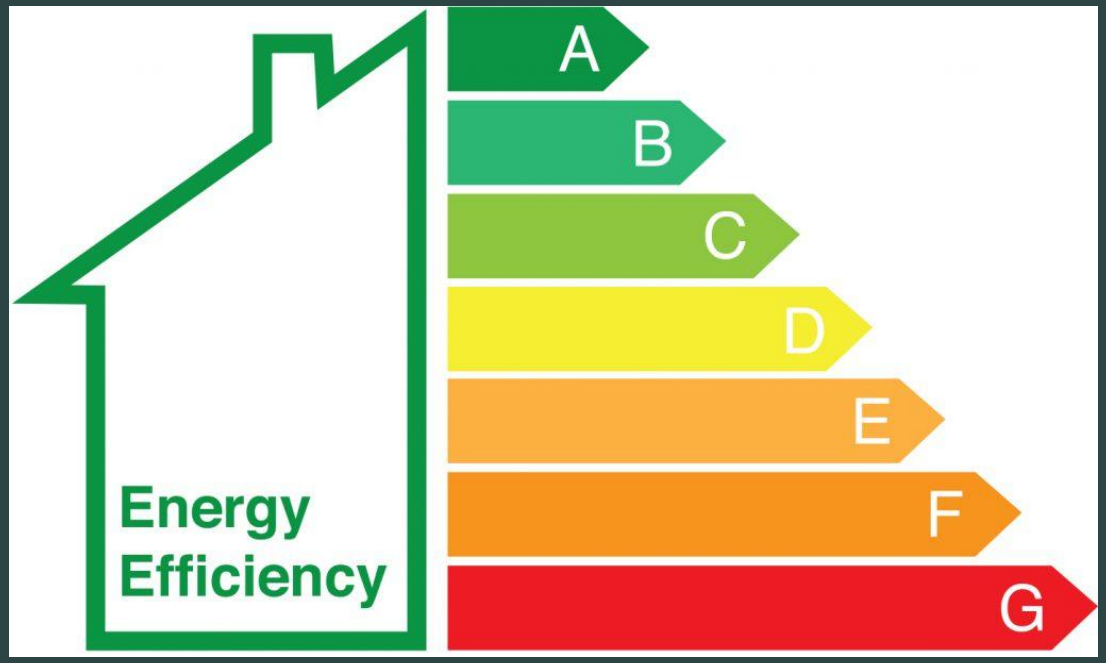
Protection for SPAs/SACs

Conditions related to Ramsar Sites?

Planning and Infrastructure Bill?

02

Court of Appeal



R. (on the application of Rights: Community: Action Ltd) v Secretary of State for Housing, Communities and Local Government **[2025] EWCA Civ 990**

R. (on the application of Rights: Community: Action Ltd) v Secretary of State for Housing, Communities and Local Government [2025] EWCA Civ 990

Factual background:

- Concerns the lawfulness of a 2023 Written Ministerial Statement concerning national policy on the inclusion by LPAs of policies in their DPDs setting building efficiency standards for new development that exceed the requirements of building regulations.

Section 19, Environment Act 2021

- "(1) A Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect."

Two issues:

- Was there a failure by the Minister to fulfil the duty under s.19 of the Environment Act 2021 to have due regard to the Environmental Principles Policy Statement?
- Does the 2023 WMS unlawfully purport to restrict the exercise by local authorities of powers conferred by statute?

Section 19, Environment Act 2021

Applies at a number of stages, not just adoption

Must be carried out in "substance, rigour, and with an open mind"

Remedying an earlier failure?

Ground 2

"79. I am left with the impression that **the draftsman did not think through the tension** between the intention to use national measures to impose statutory restraints on how far a LPA may set standards exceeding building regulations and the well-established legal principle that a LPA can include in its DPD a local policy which conflicts with national policy, justified, for example, by local circumstances (see e.g. West Berkshire).

80. … **However, it is unnecessary for the court to reach a conclusion on the matter** in order to determine this ground of appeal. Even if the PEA 2008 does not empower LPAs to set a higher standard than is contained in national policy, e.g. the draft FHS, then the fact that the 2023 WMS goes further by addressing that exceptional case does not lend any support to the appellant's argument that the WMS unlawfully cuts across the PEA 2008."

Mead Realisations Ltd v SSHCLG [2025] EWCA Civ 32

Mead Realisations Ltd v SSHCLG [2025] EWCA Civ 32

Factual background:

- Claimant applied for outline planning permission for a residential development in FZ3a.
- Planning permission was refused on the basis that the proposal was contrary to the Sequential Test in the NPPF and contrary to Policy CS3 in the local authority's core strategy.

NPPF/PPG

- The NPPF contains no definition of "reasonably available sites", but guidance on this concept is provided in the PPG on Flood Risk and Coastal Change.

The issue on appeal

- (1) Whether the judge wrongly held that the PPG can "amend" the NPPF.
- (2) Whether the judge wrongly held that the inspector properly treated the PPG as "elucidating" the NPPF.

The Decision: PPG/NPPF Relationship

Different purposes....

...but no distinction in legal status

PPG can explain an NPPF policy

Each an aid to interpretation of the other

The Decision: On the facts

"46 In the absence of a definition of "reasonably available sites" in the NPPF itself, there was obvious scope to clarify that concept in the PPG, and obvious advantage in doing so. Providing a definition in the glossary to the NPPF, or elsewhere in the text, was not the only way in which that could be done. The opportunity to do it was properly taken in the PPG.

47 …The PPG did not contradict or override the existing NPPF policy for the sequential test. It did not generate a new or different policy. It did not modify the existing policy by introducing into that policy additional requirements or restrictions. It provided practical guidance on the application of the policy as it stood. It articulated the Government's thinking on the concept of "reasonably available sites". It did so by identifying considerations that would be relevant in applying the pre-existing policy in the NPPF. None of this involved any amendment to the NPPF policy itself. No such amendment was required. The guidance fell within the four corners of the policy."

The Decision: On the facts

In any event, even if the PPG did amend the NPPF, there was no legal obstacle to that - §58:

“there is no legal principle which prevents national policy in the NPPF being altered by a WMS and/or PPG…. Putting the point at its lowest, for the Government to have used the guidance it gave in paragraph 7-028 of the PPG to modify or qualify its own policy in paragraph 162 of the NPPF in those terms would not have been contrary to any provision of statute, nor would it have it offended any principle of law.”

R. (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council [2025] EWCA Civ 488

- **Factual background:** The background concerned the Council's decision to grant planning permission for development which included 473 new houses on the Isle of Wight, along with additional infrastructure. There were highways concerns. A s.106 Agreement was proposed to address those concerns. The Council resolved to grant planning permission subject to the completion of that agreement. However, at no point prior to the execution of that agreement did the Council place it on the planning register as it was required to do by the Town and Country Planning (Development Management Procedure) (England) Order 2015 Pt 9 art. 40(3)(b).

- **The Issue:** was the decision to grant planning permission invalid by reason of the failure to comply?

R. (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council [2025] EWCA Civ 488

- **The Decision:** The decision was invalidated by the Council's failure to publish the s.106 Agreement, and it was no possible to apply SCA 1981 s.31(2A) to rescue the decision. At [66], for example:

- "Secondly, the **consequences of non-compliance was to deprive the appellant of the opportunity to comment upon the contribution**. The significance of that can be assessed by considering whether there was anything that the appellant might have wished to say on the proposed or final section 106 agreement, and whether it would have wished to comment**. On the first issue, it is obvious that the appellant, on the facts, of this case, might well have wanted to comment on the amount of the financial contribution**. The contribution was £406,359. It was intended to fund the highway improvements necessary at the two junctions. The officers' update to the planning committee of 27 July 2021 had said that the developer's own estimate of the costs of the work was in the region of £777,000 (in 2021). It is obvious that comment might well have been made on why a proposed section 106 agreement provided for a financial contribution which appeared to be well short of the amount required to do the highways works rendered necessary by the grant of planning permission..." (Emphasis added).

R. (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council [2025] EWCA Civ 488

And some guidance on s.31(2A) generally:

"104 In the present appeal one of the submissions for the respondent has been that, even if there was a breach of the law because the respondent failed to publish a proposed section 106 agreement before the grant of planning permission, it is highly likely that the outcome would have been the same: see the respondent's skeleton argument for this appeal, at paragraph 24.

105 If that proposition was to be made good**, it was incumbent upon the respondent to give a full and clear explanation of how certain figures which have been relied upon were arrived at**. That explanation cannot be found in the witness statements filed on behalf of the Respondent. Instead, at the hearing before this Court, counsel appearing for the respondent took us to a number of different documents, to be found in different places, for example an email dated 11 February 2022 which was exhibited to David Long's witness statement. We were also taken to particular passages in what are otherwise long and detailed reports about a variety of subject matters: see paragraphs 75-76 in the judgment of Lewis LJ. This approach is to be deprecated in judicial review proceedings." (Emphasis added).

Test Valley BC v Fiske [2024] EWCA Civ 1541

- **Factual background:** The facts concerned a solar farm development. Permission was granted subject to conditions. The developer made an application for planning permission without complying with one such condition. That application to the LPA was successful. The effect was to increase a voltage limit set by condition attached to the original permission. The Claimant sought judicial review on the basis that the new condition, which increased the voltage limit, was inconsistent with the operative part of the original planning permission. Thus, the Claimant argued, the decision to grant the application under s.73 of the TCPA 1990 was ultra vires.

- **The Issue:** what is the correct ambit of the power under s.73?

Test Valley BC v Fiske [2024] EWCA Civ 1541

- **The Decision:** In his judgment, Lord Justice Holgate held that conditions would fall outwith the power in section 73 if they were inconsistent in a material way with the operative part of the original permission. However, Holgate LJ also found that where both the operative part and the conditions of a permission granted under s.73 are consistent with the operative part of the earlier permission, there is no legal justification for treating a s.73 permission as *ultra vires* because its conditions would make a substantial or even a fundamental alteration to the development authorised by the permission read as a whole.

03

High Court

Somani Hotels Ltd v Epping Forest DC [2025] EWHC 2937 (KB)

- **Factual background:** The Appellant operates the Bell Hotel in Epping, Essex. It is currently used to house applicants to the UK government for asylum. Protests – alleged to include incidents of violence – had occurred. Epping Forest – the Local Planning Authority – sought an injunction to restrain this use on the basis that – Epping Forest argues – it amounts to a material change of use for which no planning permission has been granted. Following well publicised appeal proceedings, the matter came before Mr Justice Mould in October 2025. Judgment was handed down on 11 November 2025.

- **The issue:** Should a final injunction be granted under TCPA 1990 s.187B to restrain the use of Bell Hotel to house asylum seekers?

Somani Hotels Ltd v Epping Forest DC [2025] EWHC 2937 (KB)

- **Decision:** It was not just and convenient to grant an injunction, to summarise, for the reasons at [295]:

"I have reached the clear conclusion that this is not a case in which it is just and convenient for this court to grant an injunction. I give due respect to the Claimant's judgment that the current use of the Bell as contingency accommodation for asylum seekers constitutes a material change in the use of those premises which requires planning permission. Nevertheless, I have not been persuaded that an injunction is a commensurate response to that postulated breach of planning control. The **breach is far from being flagrant. Conventional methods of enforcement have not been taken**. Taking a broad view**, the degree of planning and environmental harm resulting from the current use of the Bell is limited**. The continuing need for hotels as an **important element of the supply of contingency accommodation to house asylum seekers in order to enable the Home Secretary to discharge her statutory responsibilities is a significant counterbalancing factor**. This is decidedly not a case in which there is an abuse of planning control resulting in serious planning or environmental harm which now demands an urgent remedy. In my judgment, it is not appropriate to grant an injunction on the Claimant's application for the purpose of restraining the use of the Bell as contingency accommodation for asylum seekers." (Emphasis added).

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Thank you

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