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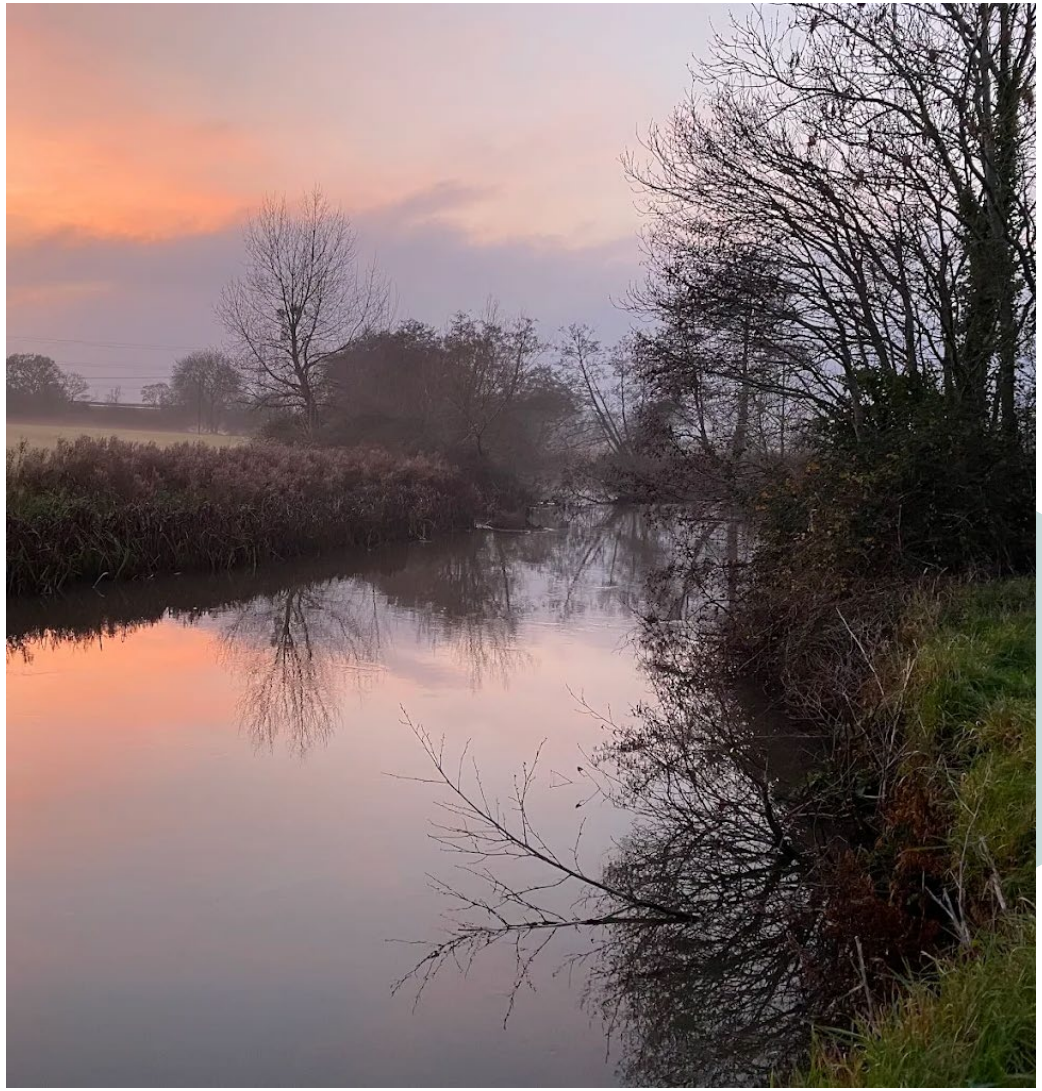
Key court cases of the past 12 months

Rowan Clapp
Deia Russell-Smith

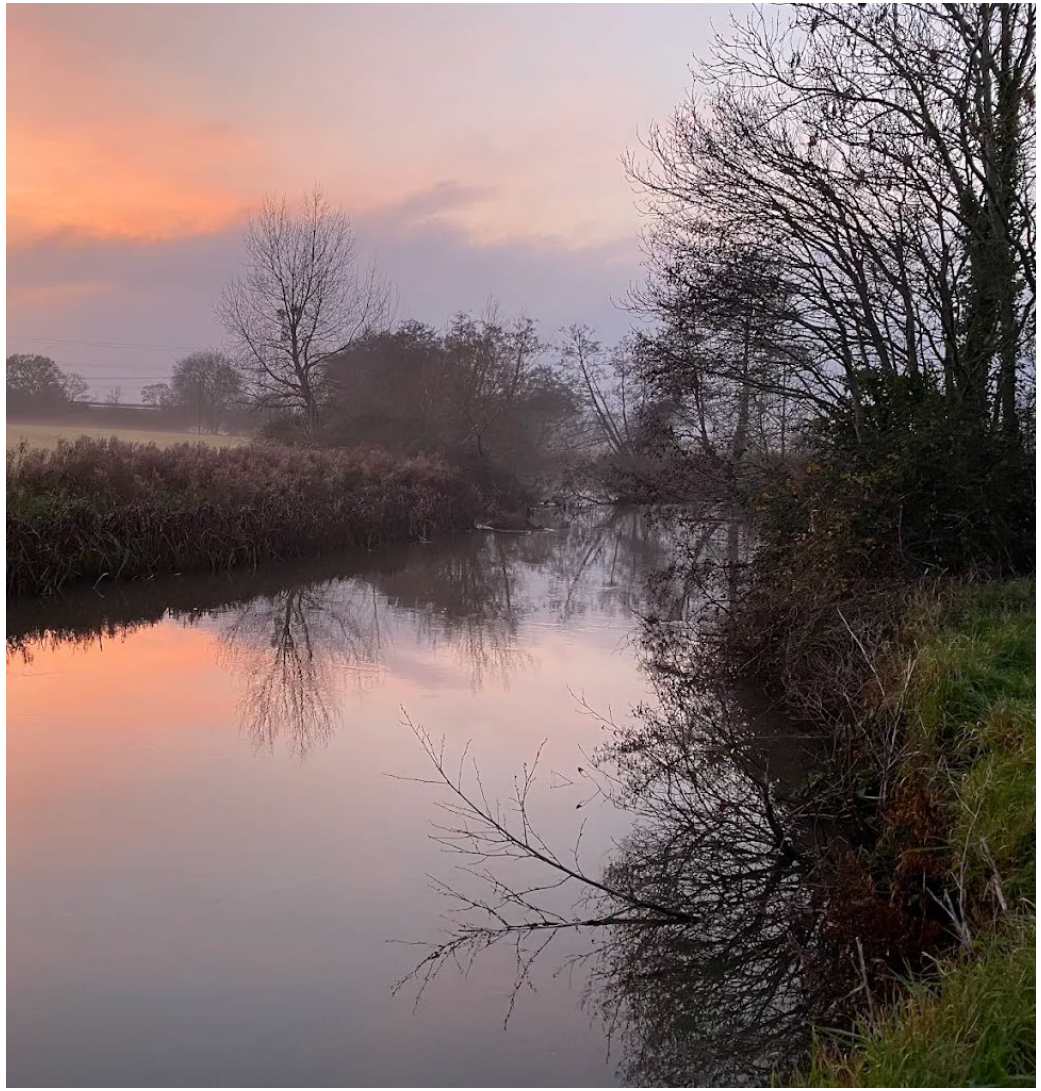
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CG Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government [2025] UKSC 35

- In December 2015 - OPP for 650 dwellings and commercial and community uses within the catchment area of the River Tone (part of a **Ramsar** site).
- Ramsar sites not protected by the Conservation of Habitats and Species Regulations 2017, but (then) **NPPF para 181** required for their equivalent protection as that afforded to European sites.
- Reg 63 of the 2017 regulations requires an appropriate assessment if a plan or project is likely to have a significant effect on a European site.
- OPP to come forward in eight phases. In June 2020, App granted RM approval for phase 3 (190 dwellings) subject to ten conditions, **then in Aug 2020, Natural England published new advice** on Ramsar sites: where additional phosphates in the catchment area, an appropriate assessment should be performed.
- June 2021 – App applies for discharge of the 'sub-conditions' on the RM approval. Council withhold on basis that no appropriate assessment performed.



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

- Refusal unsuccessfully challenged before an Inspector, in the High Court [2023] EWHC 1622 (Admin), and in the Court of Appeal [2024] EWCA Civ 730.
- CA held that a.) reg 63 **applied** at the stage of whether conditions attached to RM approval should be discharged, and b.) that **para 181 NPPF was engaged and was a material consideration** re: the determination of discharge of 'sub conditions' on the RM so the application of para 181 was an appropriate basis to refuse RM approval.
- Issues for SC: a.) did the 2017 regulations apply to the discharge of conditions on an RM approval **("Issue 1**"), and b.) if they did, was is lawful to refuse to discharge the instant condition in reliance on para 181 and updated scientific advice provided after the grant of the OPP. (**"issue 2"**).
- Answers: a.) Yes, b.) No.

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On issue 1: Appeal dismissed, the wording within reg 63(1) of the 2017 regulations was sufficiently broad to cover the discharge of conditions subject to the OPP [54] [56]. The purpose of the 2017 regulations was to implement the Habitats Directive, which had the object of ensuring that vulnerable sites are afforded a high degree of protection [47] [50]-[51]. The purpose of the 2017 regulations and precautionary principle would be defeated if the 2017 regulations precluded an appropriate assessment at later stages where one had failed to be carried out earlier [56].

On issue 2: Appeal allowed. The grant of planning permission confers a right to a developer to develop the land in accordance with the permission [62]. The rights conferred by the grant are defined by that grant and cannot be overridden by government policy [60]-[62]. **The imposition of a condition does not import a general power for the authority to refuse approval to further a purpose or policy objective not fairly related to the subject matter of the condition [66]. In determining whether to discharge the condition, the LPA was confined to consider matters which fairly related to the conditions imposed, and it did not have a power to refuse approval on the basis of a policy objective** [69]. Here, in refusing to discharge the condition, the authority had revisited matters approved at outline stage, potentially in a way which might undermine the development permitted by the OPP coming forward. The conditions in the OPP did not refer to the objective of protecting the Ramsar site [70] and so it was not open to the Council to refuse to discharge the RM conditions on the basis that additional measures were required to protect the Ramsar site.

Epping Forest DC v Somani Hotels Ltd [2026] EWCA Civ 264

- Case concerned a **s.187B injunction** (granted in the first instance) restraining the Bell Hotel from being used as temporary accommodation for asylum seekers.
- At the return hearing Mr. Justice Mould determined not to grant a final injunction informed by the matters set out at §6 of our note. Epping appealed but permission to appeal was refused in a detailed judgment.
- Epping contested that the **Judge had declined to determine whether there had been a material change of use amounting to a breach of planning control.** CA held that the Court had assumed that point in the authority's favour [50] and had taken into account the planning harm arising [56] whilst declining to make the injunction.
- It was reasonably open to the Judge to award the SSHD its costs [92] **even though it was not a party** to the original claim (but had been joined as an interested party) and no unfairness in the Court ordering a payment on account in favour of Somani Hotels [93]
- There was no other compelling reason for the appeal to be heard [100]-[108], **many of the grounds of challenge related to specific findings on the injunction claim** [104].



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Titchfield Festival Theatre Ltd v Secretary of State for Housing, Communities and Local Government [2026] EWCA Civ 368

- **S.57(4)** TCPA 1990: where EN issued, PP not required for the use site could lawfully have adopted if the unlawful development had not been carried out.
- EN issued alleging material change of use to theatre use. C appealed, contending that it **could revert to prior lawful** use under s.57(4) TCPA 1990 (theatre use on units A and B, storage use on unit C). Inspector dismissed this and High Court dismissed the appeal.
- CA allowed the appeal.
- In holding that s.57(4) was unavailable, the Inspector had agreed that there had been various pre-existing lawful uses, but found **that the development causing the breach resulted in the amalgamation of separate units into a new planning unit, such that the original units enjoying the preceding lawful use no longer existed**, meaning s.57(4) did not apply.
- The Court held that s.57(4) requires the decision-maker to consider whether the previous use was lawful on the assumption that the breach **had not taken place**, so the creation of the new planning unit was irrelevant.



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Titchfield Festival Theatre Ltd v Secretary of State for Housing, Communities and Local Government **[2026] EWCA Civ 368**

The test under s.57(4) TCPA 1990:

(1) identify the development which the enforcement notice alleges to have been a breach of planning control on the land to which the notice applies;

(2) identify the use of that land immediately before that breach;

(3) make the assumption that that breach has not taken place;

(4) on that assumption, consider whether the immediately preceding use of the land was lawful;

(5) if the answer under (4) is that it was lawful, planning permission is not required to revert to that use (§61).





***R (Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport* [2026] EWCA Civ 648**

- CA refused application for extension of time for permission to appeal a DCO for the above airport.
- **1 October 2025 52PD para 17.3** came into force, reducing the 21 day time limit for filing an appellant's notice for NSIPs to seven days.
- The court applied the test from *Denton*, holding that the breach was serious and significant, and the reasons for the default were not sufficient.
- As to 'all the other circumstances' the Court considered that the purpose of the timing change was to speed up delivery of NSIPs, with truncated dates for challenge being a manifestation of that policy. In the circumstances, failure to meet the deadline was analogous to the loss of a trial date, and public interest in the issues raised was not a sufficient compelling reason to grant the application.

R (Ocean One Hundred Ltd) v New Forest National Park Authority [2026] EWCA Civ 493

- Claim concerned local authority's decision to revoke a certificate of lawfulness, revocation upheld in High Court but appeal allowed before the CA.
- Owner applied for a CLEUD on small part of site, but NPA approved CLEUD on broader terms on the basis that full site had a lawful use as a caravan site. NPA received correspondence that CLEUD should be revoked, and following an OR, NPA revoked the CLEUD.
- *"A most unusual case the circumstances of which, it is to be hoped, are unlikely to be repeated"* [1]. Four of the five grounds failed, but fifth ground succeeded, useful guidance [170]:

  > "A decision to revoke is not made by reference to planning policy but largely, in the application of s193(7), **by reference to the circumstances which led to the granting of the original certificate**. It is as Jay J said a 'sensitive, unusual and complex decision making process' and it is accordingly of the utmost importance that the investigations which proceed the compiling of the officer's report are seen to be scrupulously fair. That was not as the judge found, the case here."



R (Ocean One Hundred Ltd) v New Forest National Park Authority [2026] EWCA Civ 493

- Matters to have regard to if authority considering gathering evidence from the public in deciding whether to revoke a CLEUD:

  (1) **Transparency** in the way evidence is collected (e.g. record-keeping such as notes of meetings);

  (2) In any event, **the timing and extent of disclosure of information** obtained to parties who would be adversely affected by revocation;

  (3) Who within the LPA is to **take the decision** on revocation;

  (4) Who is to prepare a **report** for the decision-maker;

  (5) **Whether there needs to be a separation of functions between those promoting revocation and those reporting on, or deciding on, that issue**;

  (6) Recording and **giving reasons** for a decision to revoke a certificate.



Dharmeshkumar v Secretary of State for Housing, Communities and Local Government [2026] 1 W.L.R. 3289

Surprising lacunae: what is the test in deciding whether to grant permission to bring an appeal to the Court of Appeal in an enforcement case (under s.289(6) TCPA 199)? **Is it the 'first appeals' test, under CPR r.52.6 or r.52.7?** Difference is material because the second appeals test requires an appellant to raise an important point of principle or practice. Previously been assumed that the second appeals test applied to the CA because there had already been an appeal to the High Court under s.289 from which a party would be seeking a further appeal.

Court found that the 'second appeals' regime introduced by the Access to Justice Act 1999 was not intended to apply to the specialist regime under s.289 (noting that appeals from s.288 determinations are 'first appeals'), such that **the 'first appeals' test under r.52.6 should apply.**

So an appellant will need to demonstrate a real prospect of success or some other compelling reason for the appeal to be heard (r.52.6(1)(a)-(b)).



R (Moran) v Medway Council [2026] EWCA Civ 484

- Concerned scope of s.70C TCPA 1990 in declining to determine application for permission in respect of breach which had an EN issued in respect of that breach.
- 2017 LPA served EN on previous owners for breaches including material change of use to residential use, stationing of caravans and laying of hardstanding.
- In next three years, s.70C used seven times in relation to various planning applications and LPA took direct action at site.
- Appellant acquired site in 2020. Submitted planning application for change of use to residential use, siting of caravans and mobile homes together with construction of day rooms and stable building. LPA relied on s.70C again. Appellant judicially reviewed, claiming that LPA presented with detailed and carefully thought through application that provided strong case in support of proposed development. Argued that use of s.70C inappropriate as purpose of that provision was to defeat attempts to delay enforcement action, and argued that s.70C did not apply to prospective development, but only to applications where the development had already been carried out.

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R (Moran) v Medway Council [2026] EWCA Civ 484

- Court held that the power could lawfully be relied upon by the LPA in the circumstances and that the approach on the application of s.70C is as follows [64]:

(a) was there a pre-existing enforcement notice;

(b) if so, did the application seek permission for development which (in whole or in part) included development identified as a breach of planning control in the pre-existing enforcement notice; and

(c) if so, then the LPA had a discretion as to whether to decline to determine the application, or to accept it and determine it on its merits

- Permission to appeal to the Supreme Court allowed on 30 July 2025

***R (Halton BC) v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 1566**

- LPA appealed against a costs award made against it by the SoS in the course of a called-in inquiry.
- Developer submitted planning app for a site near chemical facility. Health and Safety Exec objected but LPA resolved to grant, and so there was a call-in.
- LPA and HSE submit proofs from expert witnesses. LPA had extensive discussions with its expert witness before the hearing.
- At the hearing, LPA's witness admitted in XX by the barrister for HSE that he would advise the SoS not to grant PP. The LPA accordingly withdrew their support for the app and as a result the developer withdrew the application for planning permission. Developer made application for costs award on the basis that the LPA's withdrawal of support amounted to unreasonable conduct. LPA challenged ([2024] EWHC 2030 (Admin)) and appealed.
- Appeal allowed: i.) withdrawing following an expert no longer supporting the case advanced was a good reason, ii.) the LPA was not required to have tested its expert's evidence to ensure it could withstand XX and iii.) the fact that an expert evidence was 'destroyed' in XX did not mean the party calling him were unreasonable in doing so.



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R (Davis) v Isle of Wight Council [2026] EWHC 1718 (Admin)

- Is it unlawful for a planning officer to share a draft committee report for comment with a developer before publication? The developer in question made comments and amendments, some of which incorporated.

- No, as long as there are **procedural safeguards** in place [103]-[104] : Tim Smith (sitting as Deputy High Court Judge) set out the following non exhaustive factors for consideration [106]



R (Davis) v Isle of Wight Council [2026] EWHC 1718 (Admin)

(1) the responsible officer for the report must have exercised some independent judgement in relation to any input received;

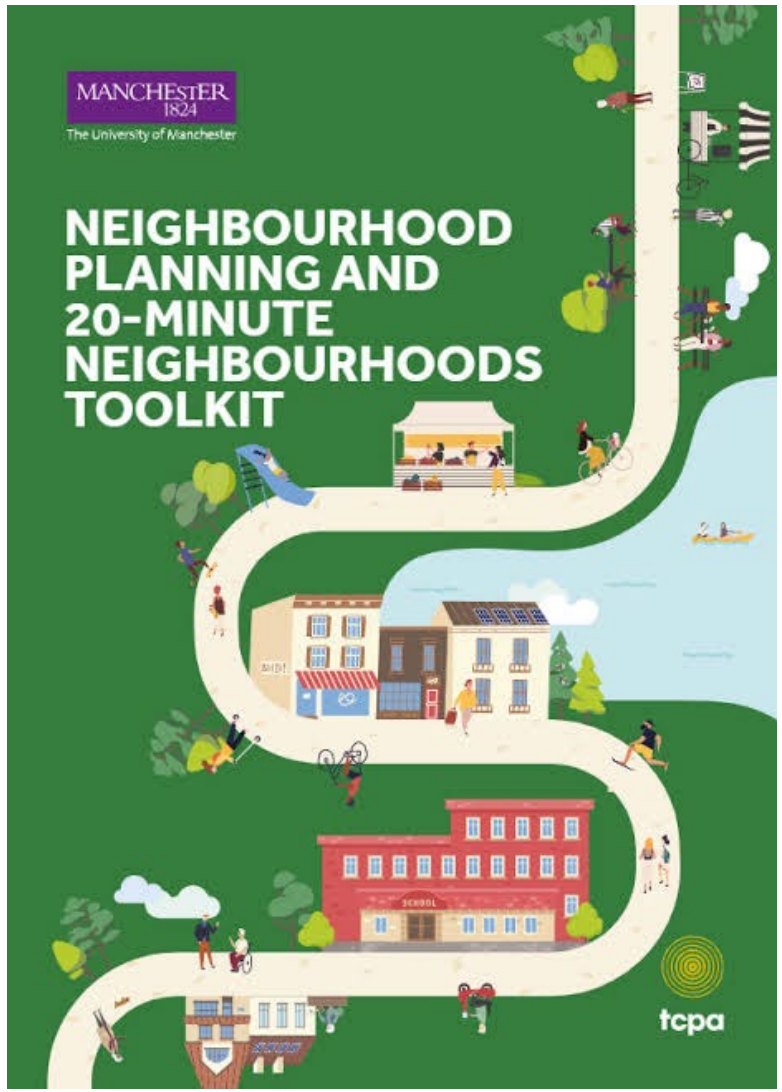
(2) the officer's exercise of discretion might be understood by how those comments are received and acted upon;

(3) whether the officer's view was arrived at unprompted by any comments may also be a relevant factor;

(4) the substance of the comments will also be relevant for example highlighting typographical errors are different from those on the substantive recommendations being made; and

(5) the greater the degree of transparency around the assistance obtained, the less arguably unfair its use will be





Manorwood Consultancy Ltd v South Oxfordshire DC [2025] EWHC 3235 (Admin)

- When to judicially review a particular **stage** of an NP?
- Developer proposed to build five houses on a site that LPA had advised to be acceptable in principle, but later the NP was reviewed and a built up area boundary was introduced, and the proposed site was outside the boundary.
- Developer said that it had been unfairly excluded: developers of larger sites had been contacted and consulted on the reviewed but it didn't know about it until publication.
- Challenges to be made pursuant to **s.61N TCPA**: when did time start to run for challenge to consultation stage?
- Seven stages to NP process. Here challenge was to stage 2, but s.61N imposes timelines for challenges to stages 5-7. Court held that parliament had not restricted time for filing claim on stages 1-4. Interpreting s.61N(1), **claimant may challenge these stages as long as claim brought within 6 weeks of the decision to make the NP**.

King Media Ltd v Secretary of State For Housing, Communities and Local Government **[2026] EWHC 2406 (Admin)**

- S.288 TCPA claim by advertising company of planning inspector's decision to uphold a discontinuance notice requiring removal of an externally illuminated advertisement shroud.
- Court dismissed the appeal.
- Proceeded on the basis that a 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 **was a 'possession'** for the purposes of Article 1 Protocol 1 ECHR.
- Held that the **absence of compensation** in issuing the notice did not breach A1P1.
- Discontinuance notice was **proportionate** and did not amount to complete deprivation: express consent could be applied for alternative display.
- Enforcement delay had allowed the company to continue receiving advertising revenue rather than prejudicing compensation.



Leigh v Secretary of State for Housing, Communities and Local Government **[2026] EWHC 537 (Admin)**





Giles v Secretary of State for Housing, Communities and Local Government **[2026] EWHC 1062 (Admin)**

Save the Fox and Hounds Campaign Ltd v Secretary of State for Housing, Communities and Local Government **[2026] EWHC 4 (Admin)**



R (Faversham Town Council) v Secretary of State for Housing, Communities and Local Government **[2026] EWHC 1651 (Admin)**

R (Canham) v Calderdale MBC **[2026] EWHC 1893 (Admin)** ***R (Canham) v Calderdale MBC*** **[2026] EWHC 1893 (Admin)**





R (Kanogarasa) v Secretary of State for Housing, Communities and Local Government **[2025] EWHC 3641 (Admin)**

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Thank You

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