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FEBRUARY 2014 ***Planning, Environment & Property Law Newsletter***

Welcome to the February 2014 edition of the newsletter. This month's issue covers a diverse range of topics, including articles from Gordon Nardell QC on transfrontier waste shipments and Richard Harwood QC on development plans and the duty to co-operate, from John Pugh Smith on the operation of paragraph 49 of the NPPF, and two summaries of recent cases involving members of Chambers which highlight the approach of the courts when considering potential harm to heritage assets and sites of historical importance. We hope that you enjoy it.

Caroline Allen

Virtual delivery?

John Pugh-Smith

In this article John Pugh-Smith addresses the issues and challenges arising from the recent High Court decision in Barrow Parish Council v Secretary of State for Communities and Local Government

For everybody caught up in the current outworking of the housing policies of the National Planning Policy Framework (NPPF) the hot debate with each application is whether (a) the local planning authority (LPA) has at least a five year supply of deliverable housing sites and (b), if not, whether other sites should be released. However, even with the imperative to achieve speedy decision-making to help deliver economic growth the heart of the NPPF is concerned about the achievement of sustainable development, the so-called "golden thread", based upon the three 'pillars' of social, environmental and economic considerations; and so absence of harm has to be weighed in the balance.

In Barrow-Upon- Soar Parish Council v (1) Secretary of Stage for Communities & Local Government, (2) Charnwood Borough Council, (3) Jelson Limited [2014] EWHC 274 (Admin) the Parish Council challenged the Secretary of State's decision to grant planning permission to Leicestershire housebuilder, Jelson Homes, on the basis that Jelson had not satisfactorily demonstrated that a major sewerage problem could be sufficiently overcome to allow its 300 house scheme to proceed promptly. The Parish Council had argued that there must be a realistic prospect that housing could be delivered on the site within that period if Jelson were to benefit from the presumptions in both NPPF paras. 14 and 49. Accordingly, the Secretary of State's Inspector should have examined the issue more rigorously and not simply accepted Jelson's word that the problem would be solved. However, Mr Justice Collins decided that the imposition of a planning condition, at the request of the Environment Agency, restricting the development from starting until the issue had been addressed was an adequate safeguard. and did not warrant the outline permission being quashed.

The judgment is a tantalizing and frustrating one; for while it appears to endorse the appropriateness of the "realistic prospect" test it leaves, unanswered, a number of highly important questions. The first is what is required of the developer applicant? The judge remarks: "It is of course for an applicant to demonstrate that permission should be granted, but I am far from persuaded that it is necessarily appropriate to talk in terms of burden of proof". The second is what does the developer applicant need to establish where reliance is placed upon NPPF para. 49? It was suggested by the Defendants' counsel for the Secretary of State and Jelson that as there is a general requirement to 'boost significantly the supply of housing' provided that the location and characteristics of the site do not indicate

that the development has adverse impacts which mean it is not sustainable, development can properly be approved. Even if the meaning of deliverable in the footnote to NPPF para. 47 can be generally be imported into NPPF para.173 (deliverability and viability), there is no requirement that in order to be regarded as sustainable the development must be completed within 5 years. At most, it requires a reasonable time which can properly identified by conditions. Furthermore, since the objective of the relevant bullet point in NPPF para.47 is the identification of particular sites which can produce a five year supply, the precise definition of deliverable in its limitation to a realistic prospect of delivery within five years is not material in relation to sites which are not within the annual five year requirement. However, upon closer analysis, such submissions cannot be right if the significant 'boost' is to be in the supply of built housing rather than simply to the number of residential permissions. Given the political castigation of landowners for "sitting on permissions" how can interpretation of the NPPF be other than about the achievement of provision in terms of bricks and mortar rather than on paper.

The third question arises from the clear tension, between one aspect of national policy and another. If there needs to be a realistic prospect of some built development within the life of the outline permission (five years) why should the test for the imposition of a negative condition (required to overcome a significant infrastructure constraint) be placed on a different footing? In this regard, Paras. 38 to 40 of the Annex to Circular 11/95 deal with the use of conditions which depend on others' actions. Paragraph 40 still reads: "It is the policy of the Secretaries of State that such a condition should only be imposed on a planning permission if there are at least reasonable prospects of the action in question being performed within the time-limit imposed by the permission." Sewage connection is even cited as one example where such considerations need to be borne in mind. However, by letter dated 25th November 2002, the Office of the Deputy Prime Minister notified all chief planning officers that Para. 40 should be amended as follows: "It is the policy of the Secretary of State that such a condition may be imposed on a planning permission. However, when there are no prospects at all of the action in question being performed within the time-limit imposed by the condition, negative conditions should not be imposed. In other words, when the interested third party has said that they have no intention of carrying out the action or allowing it to be carried out, conditions prohibiting development until this specified action has been taken by the third party should not be imposed." Furthermore, this amendment, whilst still in force, has not been placed into any up-date of the Circular and is not mentioned in the Planning Encyclopaedia. Leaving aside these presentational shortcomings, was the point simply overlooked by the civil servants? For how can the 'no prospect' test be reconciled with the NPPF;s imperatives? How can 'realistic prospect' of some delivery be achieved if the outworking is left to the discharge of conditions within the life of the permission (or its necessary extension(s))? In the Barrow case, the situation was, seemingly, all the more stark and absurd with the admitted absence of any approaches being made to either of the two key bodies, Severn Trent Water and Network Rail, by the Borough Council or Jelson Homes.

So, by way of conclusion, how should the reasonably prudent developer applicant present his NPPF para. 49 case? In the writer's view "realistic prospect" must embrace the presentation of a delivery programme demonstrating, on a time line, when necessary infrastructure will be provided and when built-units are expected to be delivered. After all, if the LPA is obliged to produce trajectories of anticipated delivery as part of its housing land supply assessment why should that exercise not be based upon the best evidence available? Equally, as the NPPF encourages sustainable development to be achieved through properly planned, deliverable and viable schemes, then, where earlier releases are required in the public interest that must carry an additional requirement on the promoter to prove its case, and, for the decision-maker to apply due rigour upon examination. Sadly, as with so much of this Government's planning policy, expediency

and lack of “joined up” thinking appear to be leading towards an unpopular, even a negative legacy, for the current as well that ‘future generation’ for whom we are urged to provide sustainable development.

John Pugh-Smith acted for Barrow-Upon-Soar Parish Council.

Development Plans

Richard Harwood QC

The key to a sensible planning system is sensible and workable planning policy at the local level. The reality is that putting policies in place takes time, but once that is done then reviewing them is much easier. The 1990s were spent adopting the district-wide local plans introduced by the Planning and Compensation Act 1991 and the unitary development plans required by 1980s local government reorganisation. That done -–and by the early 2000s it was basically done – the development plan reviews were progressing in good time and with few problems.

Unfortunately Government proceeded by the adage of ‘Wait until it’s no longer broken and then fix it’. The Planning and Compulsory Purchase Act 2004 tore up the now functioning system, and required it to be replaced by an entirely new set of documents, prepared in a different way, on different principles, in a wholly unrealistic timescale. Added to that was a layer of statutory regional plans, a ludicrous set of acronyms and a set of rules governing relations between documents which assumed that the system worked in some orderly progression from the Minister to a village design guide.

The result was shambolic delay, documents being withdrawn or held up and an increasing policy vacuum.

The abolition of the regional strategies took away one level of complexity and delay, but has emphasised one of the few good points of the 2004 reforms – the need for local authorities to make tough decisions in their planning policies. How much and where and why need to be determined and explained. Moving away from the fetish of lots of inter-related local policy documents, and allowing authorities to produce a single or multiple local plans, allows sensible and efficient preparation.

However there is a lack of up to date plan coverage. Part of the problem is that the time taken to revoke the regional strategies has encouraged some delay. Since a lack of plans and a lack of planning applications have led to a lack of a five year housing land supply in many districts, the failure to act more urgently might be a source of regret for many. However there are three difficulties with the plan preparation process. The first is the way in which the duty to cooperate has been applied by planning inspectors in some development plan examinations. The duty is to cooperate ‘in maximising the effectiveness’ of strategic plan making including to ‘to engage constructively, actively and on an ongoing basis’ and have regard to other public authorities’ plans. It is not a duty to agree nor a requirement for any formalised joint working and simply as a matter of ordinary language the effort required is proportionate and not that extensive. The application of the duty is a simple matter of considering the legislation: the National Planning Policy Framework and any departmental guidance does not affect whether the duty has been met. Whilst the headline cases of plans being withdrawn mask the number of plans which pass examination, other plans are being delayed and in some cases Inspectors have taken an excessive view of the legal requirements.

The real question – and this is the second problem - is that the soundness of a plan does depend in part upon whether it takes account of what is happening around it. A common approach across plan areas is helpful, but the democratic principle (which is what localism is here) does mean that neighbouring authorities may well disagree. The plan system does not force them into agreement, but does mean that each has to take account of what each other is or is not prepared to do.

The final difficulty is the relationship between local plans and neighbourhood development plans. Councils will become increasingly dependent upon parish councils and neighbourhood fora to allocate sites. Whilst a neighbourhood development plan must be in general conformity with the strategic policies in the development plan, there will be tensions as to whether the neighbourhoods are making the right provision. In formulating their strategic and spatial policies, districts will have to be able to show that the sites will be found

Rejected cargoes and transhipment of waste: Joined cases C-241/12 and C-242/12 Shell Nederland and Belgian Shell

Gordon Nardell QC

The EU waste regime requires transboundary shipments of waste for recovery or disposal to be notified to the competent authorities in advance. In cases of disposal, the authorities' consent to shipment is also needed. The current rules are found in Regulation (EC) 1013/2006. The Regulation adopts the familiar definition of "waste" in Article 1(a) of the Waste Framework Directive 2006/12/EC: "any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard". In these joined cases, the CJEU had to consider how that definition applies to re-shipment of goods rejected by a buyer for non-compliance with the contractual specification.

Shell Nederland shipped a consignment of ultra light sulphur diesel (ULSD) to a Belgian buyer for sale at the pump. By mistake, the barge already contained a quantity of the fuel additive MTBE. The resulting mixture was too volatile for retail sale. The buyer exercised its contractual right to reject the consignment. So Shell shipped the fuel back to the Netherlands. Despite contamination, the fuel could be re-sold as specialised fuel, either in its existing state or after re-mixing. Shell in fact subsequently re-blended the mixture and sold it. The Dutch and Belgian authorities prosecuted Shell Nederlands and Belgian Shell for an unlawful transhipment of waste. Both criminal courts made references to the CJEU for guidance on the proper approach to deciding whether the re-shipped cargo was "waste". At the relevant time, the former transhipment legislation – Regulation (EEC) 259/93 – applied. But this contained materially identical provisions to 1013/2006.

Advocate General Jääskinen rejected Shell's argument that the 2006/12 definition should be applied in a way that avoided a disproportionate effect on trade. Equally, he accepted that the fact of rejection by the buyer under the law of contract could not be decisive of whether Shell, as holder, intended to or was required to "discard" it. The legislation had to be construed solely by reference to its environmental aims. It was highly significant that Annex I listed "off-specification products" including "materials... contaminated as a result of... mishap", and that Annex IIB listed as a recovery operation "oil re-refining or other re-uses of oil". ULSD and MTBE were themselves hazardous in the event of leakage or human contact. So the fact that the rejected mixture retained an economic value (cf. Palin Granit C-90/00 [2002] ECR I-3533) and could be re-sold was irrelevant: in substance it amounted to "waste". It became "waste" from the moment of contamination and only ceased to be so when the recovery operation of re-blending was complete.

In its judgment of 12 December 2013 the CJEU disagreed. While an object's falling within the Annex I list "constitutes initial evidence in favour of its classification as `waste'", the focus in every case must be on whether the holder "intends to or is required to discard" it. In accordance with the precautionary principle, that phrase "cannot be interpreted restrictively". However, the fact that the buyer might have "discarded" it by rejection could not be determinative of Shell's position. Shell was not legally bound to dispose of the mixture, and the fact that it had commercial value and could be re-sold on the market – even in its

contaminated state – pointed to a low risk of its disposal in a harmful manner. The additional fact that transactions in off-spec petroleum products were not generally regarded by the industry as a trade in waste was "additional evidence" to suggest that the consignment was not waste. In sum, "the fact that Shell took back the consignment... with the intention of blending it and placing it back on the market is of decisive importance". However, this reasoning "should be confined to situations in which the reuse of the goods... is not a mere possibility but a certainty, which it is for the referring court to ascertain."

The judgment will be welcomed by players in the petroleum industry. The Advocate-General's opinion would have converted a normal and beneficial trade practice, not in itself harmful to the environment, into an extremely burdensome proposition. By focusing on the Annex I and Annex IIB lists, the A-G examined the situation through the wrong end of the telescope. The Court has issued a timely reminder that the decisive question in every case is whether the holder is required or intends to discard the material. Helpfully – it has recognised that commercial considerations such as economic value, and opinion within the trade, are relevant factors in answering that question. If the material is not waste within Article 1(a), the fact that it may be subjected to an operation that would be a recovery operation if it were waste cannot bring it within the definition.

But the re-use argument is not a get-out-of-jail-free card. The precautionary principle prompted the Court to emphasise that re-use of the material had to be a "certainty". This factor enables Shell Nederland to be read consistently with earlier case-law such as Palin Granit, in which the CJEU decided that a by-product (leftover quarried stone) stored indefinitely until a use could be found for it should be categorised as waste. The difference is that in Shell Nederland, the CJEU treated the question of sufficient certainty as one of fact for the national court, introducing a large element of unpredictability to the scope and operation of the re-use argument. So the Court's welcome, if modest, nod towards commercial reality may be at the cost of greater legal uncertainty.

A Planning Battle over the Battle of Fulford

R (oao Fulford Parish Council) v City of York [2013] EWHC 3924 (Admin)

Brian Ash QC, Peter Village QC and Cleon Catsambis acted for the developers in successfully resisting a judicial review challenge to the grant of reserved matters approval in relation to the construction of 655 dwellings and associated facilities in Germany Beck, York ("the Site"). The Site was of particular interest because it had been identified by English Heritage as the "most likely location" for the Battle of Fulford in 1066.

The Battle of Fulford was a decisive victory for the Viking army of King Harold III of Norway over the English. It took place just three weeks before the Battle of Hastings and arguably altered the course of that landmark historical event.

The challenge

The challenge was brought by the civil parish council of Fulford, in whose administrative area the Site falls. The council had opposed the proposed development since the initial application in 2001.

The developers, who were interested parties in the proceedings, had been granted outline permission by the Secretary of State on 9 March 2007 following a 7-week public inquiry. The Site's archaeological value was considered in detail as part of the determination of the outline planning application. The Secretary of State agreed with the Inspector that there was insufficient evidence that the Site contained the location of the Battle of Fulford and that the conditions and terms of the s.106 agreement provided suitable safeguards. On 9 May 2013, reserved matters approval was granted.

The claimant challenged the grant of reserved matters approval on the basis that important new information had emerged during the 5 year period after outline permission was granted and that this information was not properly

considered by the defendant local planning authority. The claimant also challenged a later decision by the defendant refusing to revoke the outline permission pursuant to s.97 of the Town and Country Planning Act 1990.

The claimant sought to challenge the adequacy of the developers' Environmental Statement and of the defendant's decision-making. In particular, the claimant contended that: (i) the Environmental Statement did not refer to English Heritage's view that the Site was the "most likely" site of the battle nor to the publication 'Finding Fulford' that was produced by Mr Charles Jones (the third interested party) in 2011; (ii) the flood risk assessment should have been updated in the light of the 2011 updated flood map and of flooding events in 2012; (iii) there was insufficient information on where the hop overs for the bat routes should be located; and (iv) the committee had not appreciated that air quality was a material consideration.

The application for permission to apply for judicial review was opposed by the defendant and by the developers, with grounds for the latter drafted by Peter Village QC and Cleon Catsambis. The developers argued that they had duly complied with their statutory and common law duties (including those under the Town and Country (Environmental Impact Assessment) Regulations 2011 – "the EIA Regulations") and that the defendant was in possession of sufficient, and sufficiently robust, environmental information reasonably and lawfully to grant the reserved matters approval.

In relation to the Site's purported archaeological value, the developers noted English Heritage's findings that the Battle of Fulford was of national significance and that the Site was the "most likely location for the Battle of Fulford". However, applying the requirements of the Battlefield Designation Selection Guide, English Heritage had repeatedly refused to include the Site on the Register of Historic Battlefields on the grounds that "…the documentary and archaeological evidence is insufficiently conclusive to make this a secure identification."

This was consistent with the developers' own extensive archaeological evaluation of the Site spanning over a decade (including four Environmental Assessments, field-walking, geophysical surveys, an assessment of peat deposits, trial trenching and a metal detector survey), which had not uncovered anything that might be associated with the Battle of Fulford. The developers argued that the defendant had considered all the relevant information, including English Heritage's assessment and Mr Jones' publication, and had reasonably concluded that no significant new material had emerged since the public inquiry. In short, being the 'most likely' location for a battle was not enough; the location had be capable of sufficient identification. Further, they noted that the outline permission was subject to conditions with regards to a scheme of archaeological works and that the adequacy of any such conditions was a matter of planning judgment.

The renewal hearing

Following refusal on the papers by the Honourable Mr Justice Lewis on 30 September 2013, the claimant renewed its application in an oral hearing on 12 December 2013 before His Honour Judge Behrens sitting as a judge of the High Court in Leeds. At the hearing, the developers were represented by Brian Ash QC and Cleon Catsambis.

Central to the dispute was the accuracy and robustness of the Environmental Statements produced by the developers and the quality of the defendant's consideration of those statements. In particular, on 9 March 2012 the defendant had made a request under Regulations 8 and 22 of the EIA Regulations that the developers review the Environmental Statement in relation to, among other things, archaeology and air quality. The defendant subsequently requested additional information in respect of bat flight routes upon the discovery of a bat maternity colony on an adjacent site, but determined that it did not need any further information on flood risk.

Judge Behrens, having considered the Environmental Statements and the defendant's

decision-making process, concluded that the claim was not arguable and refused permission.

In respect of the archaeological information, Judge Behrens found that the Environmental Statement had been updated to take account of any new material and that the defendant had considered this information, as evidenced by the committee report. The judge rejected the claimant's argument that the members of the planning committee had been misled because there was no express reference to the Site being the 'most likely' site; nor was there, as a matter of law, an obligation to include such a reference. Being the 'most likely' site was not sufficient to alter the underlying archaeological analysis. Further, it was a matter of planning judgment whether the conditions were adequate and the decision of the planning authority was not susceptible to judicial review [paragraphs 31-32].

Similarly, Judge Behrens concluded that the Environmental Statement had been updated in relation to air quality and that the matter was considered in the committee report. It was a matter of planning judgment to accept the view expressed in that report, namely that no further mitigation was required [paragraphs 80-81].

As to bat flight routes, Judge Behrens rejected the claimant's argument that there was insufficient information to enable the defendant to conclude that the matter could be dealt with by way of mitigation. He repeated that this was the view of the officers and one on which the committee had to make a planning judgment [paragraph 71].

Finally, in respect of flood risk, Judge Behrens held that it was open to the committee to conclude that there was no need to update the flood assessment in circumstances where it had considered the matter and had determined that the flood risk mitigation measures included in the s.106 Agreement were sufficient to address the environmental impacts with regard to flood risk [paragraph 51].

Judge Behrens held that the claim for revocation was parasitic to the substantive challenge and that, in any event, the defendant had a discretion that was properly applied [paragraphs 82-83].

At the time of writing, the claimant is seeking the Court of Appeal's permission to appeal the decision.

This case highlighted the onus on developers to produce robust and detailed Environmental Statements and, where necessary, to update them. It also reinforced a planning authority's duty to carefully consider such statements and to determine whether updates are necessary. Provided the local authority has acted rationally and given sufficient reasons (which may be brief and do not need to refer to every piece of information), a court will be loath to interfere with matters of planning judgment.

Parallel judicial review

Charles Jones, the author of the publication "Finding Fulford", was the claimant in a related judicial review challenge to English Heritage's decision to refuse to designate the Site as the Battle of Fulford on the Register of Historic Battlefields: R (oao Chas Jones) v English Heritage [CO/1932/2013].

According to the Battlefield Designation Selection Guide, a site must be capable of close definition on the ground in order to merit registration.

On 23 November 2012, English Heritage decided not to include the Battle of Fulford on the Register because "archaeological investigation has not proved the identification of Germany Beck as the site of the battle, one way or the other; that the documentary sources for the site have sufficient ambiguity in them that, while Germany Beck is a plausible candidate it is not conclusive". English Heritage further noted that "While Germany Beck remains to be the most likely location for the Battle of Fulford, the documentary and archaeological evidence is insufficiently conclusive to make this a secure identification."

On 19 July 2013, English Heritage reviewed

and confirmed its decision not to designate the Site.

Mr Jones argued, among other things, that English Heritage (i) failed to apply the correct test; (ii) pre-determined the decision; (iii) breached the claimant's legitimate expectations; and (iv) acted irrationally by relying on the conditions attached to the outline planning permission.

Mr Jones' application for permission to apply for judicial review was refused on the papers on 18 February 2014.

Renewable energy and heritage assets: Court of Appeal gives judgment in Barnwell

Gordon Nardell QC & Justine Thornton

On 18 February the Court of Appeal gave its eagerly anticipated judgment in Barnwell Manor Wind Energy Ltd v. East Northants DC, English Heritage and National Trust [2014] EWCA Civ 137. This high-profile case concerned an inspector's decision granting planning permission for a 4-turbine wind farm affecting the setting of a number of high-value heritage assets in Northamptonshire, including the internationally significant Elizabethan complex at Lyveden New Bield. The inspector found some, but "less than substantial", harm to the setting of the assets, and held that harm outweighed by the "significant" weight attaching to the renewable energy benefits of the scheme. Lang J quashed the grant of permission. Barnwell Manor Wind Energy Ltd, through Eversheds, instructed Gordon Nardell QC and Justine Thornton to appeal. The Court of Appeal has now upheld Lang J's decision, in the process clarifying what decision-makers have to do to meet the "special regard" duty under Listed Buildings Act 1990 s. 66(1). The next edition of the Newsletter will include a more detailed analysis of this important decision, which is a salutary reminder of the great care needed when promoting and determining applications for onshore wind development capable of affecting the setting of heritage assets. Meanwhile the headlines are:

· The assessment of harm is a matter of planning judgment. However, once the decision-maker finds some harm to a heritage asset, the effect of s. 66(1) is that the harm must be given "considerable weight" in the balance, creating a "strong presumption" against the grant of planning permission.

· In striking the balance, it is not enough simply to ask whether the advantages of the scheme outweigh the harm in a loose or general sense, but whether they sufficiently outweigh harm to rebut that strong presumption.

· The courts will need to see some real indication on the face of the decision that the section has been approached in that way. Here, even though the inspector referred (in several places) to s. 66(1), Sullivan LJ thought that he "appears to have treated the less than substantial harm to the setting of the listed buildings….as a less than substantial objection to the grant of planning permission" . Even where harm is properly assessed as less than substantial, "it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed" (paragraphs 28 and 29 of the judgment).

· The Court of Appeal also agreed that the inspector had misapplied policy on heritage assets in what was then PPS5 (now incorporated into the NPPF), undermining his assessment of the harm as "less than substantial". He had failed to properly examine the contribution the setting of the assets made to their significance, with the result that his assessment of the harm caused by the introduction of the turbines to that setting was flawed. Nor was it clear how he could rationally have treated the distinction between "substantial" and "less than substantial" harm as turning on the observer's ability to distinguish between the heritage assets and the obviously modern turbines.

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Richard Harwood OBE QC specialises in planning, environmental, Parliamentary and public law. He appeared before Select Committees on the Channel Tunnel Rail Link Bill and Crossrail Bill and has drafted over 1500 amendments to Parliamentary Bills. Richard was awarded “Environmental/Planning Junior of the Year” at the Chambers Bar Awards 2011. He is the author of Historic Environment Law and Planning Enforcement. To view full CV **click here**

Gordon Nardell QC Gordon Nardell QC specialises in commercial and regulatory disputes about natural resources and major projects including energy and infrastructure. Recent cases include Barnwell Wind Energy Ltd v. E. Northans DC, English Heritage and National Trust [2014] EWCA Civ 137 (onshore wind), R (Manchester Ship Canal Co) v. Environment Agency [2013] EWCA Civ 542 (flood risk) and R (Walker) v DECC [2011] EWHC 2048 (Admin) (nuclear safety). He is currently instructed in an international contract dispute about emissions trading. A former member of the UK Parliamentary Counsel Office, Gordon has undertaken extensive drafting and advisory work on a succession of Bills relating to the energy sector, most recently the present Energy Bill. Gordon is recommended by Chambers & Partners in Environment. He is a Member of the Chartered Institute of Arbitrators, a member of the LCIA arbitrators’ panel and an accredited mediator. He currently serves as Leader of the European Circuit of the Bar. To view full CV **click here**

John Pugh-Smith MA, FSA, CEDR Accredited Mediator, practises in the fields of planning and environmental law with related local government and parliamentary work for both the private and public sectors. Much of his work is project and appeal related with a particular workload at present in strategic and retirement housing developments. John also practises as a mediator in a wider range of areas. He is a committee member of the Bar Council’s ADRC and a founding member of the Planning Mediation Group of the RICS. He has been and remains extensively involved in various initiatives to use mediation to resolve a wider range of public law issues including as one of the mediator on the DCLG/ HCA’s joint panel of “Section 106 brokers”. He is also one of the Design Council/ Cabe’s Built Environment Experts. To view full CV **click here**

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Justine Thornton specialises in environmental and planning law and is rated by Chambers and Partners as “one of the finest juniors in the field”. Prior to joining 39 Essex Street, she worked for Allen & Overy LLP, Simmons & Simmons and the European Commission Environment Department. Justice is a member of the Attorney- General’s Panel of Counsel, appointed to act for the Government and is appointed as an advocate for the Welsh Assembly. She is (with Richard Wald) General Editor of Thomson’s Encylopeadia of Environmental Law and a contributor to Tromans on Environmental Impact Assessment law and Practice. She is a Case Law Editor of the Journal of Environmental Law. To view full CV **click here**

Caroline Allen has an expanding planning and environmental law practice. She is listed as one of the top juniors under 35 by Planning magazine and is regularly instructed by developers, local authorities and objectors in respect of a wide range of matters including waste, compulsory purchase, highways and green belt development. She has both prosecuted and defended proceedings in the Crown and Magistrates’ Courts and has a specialist practice in the field of costs.
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Cleon Catsambis practises across chambers’ areas of work, with a particular interest in environmental and planning law. Cleon also accepts instructions from clients from the construction industry in property, environmental, planning and energy related disputes. He has recently advised and acted for clients in relation to disputes over nuclear infrastructure, s.106 agreements and green infrastructure strategy. He has experience in undertaking pleading and advisory work for a wide variety of domestic and international clients. He appears regularly in all types of court and tribunal. To view full CV **click here**

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