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Introduction

Celina Colquhoun
Call 1990

Christopher Moss
Call: 2021

Welcome to our October 2025 edition of the Planning, Environment & Property Newsletter. It has been a busy summer with planning in the mainstream press courtesy of the highly reported *Somani Hotels Ltd v Epping Forest DC* [2025] EWCA Civ 1134 case considering the contentious issue of asylum hotels. With Epping Forest DC having lodged an application for permission to appeal to the Supreme Court after the Court of Appeal set aside an interim injunction blocking the use of the Bell Hotel in Epping to accommodate asylum seekers, and the Government proposing that it may return to the use of disused army barracks for asylum accommodation; the potential planning issues presented by asylum accommodation seem to be back with renewed attention after the flurry of cases on this issue under the last Government.

We start off this edition with **Richard Harwood KC** returning to 2020 and considering the continued impact that the Covid lockdowns and restrictions on businesses may have on the commencement of uses and the running of time in planning enforcement. We are also pleased to welcome our new member **Matthew Wyard** who provides his analysis of *Cotham School v Bristol City Council* [2025] EWHC 1382 (Ch) and lessons to be learned for schools to ensure that their land is protected from applications seeking to register school playing fields as common land or village greens. On top of this we have articles covering the following:

- **Ned Helme** considers *Green Lane Association Ltd v Central Bedfordshire Council* [2025] EWHC 2251 (Admin), the first case looking at the scope of Article 9(3) of the Aarhus convention after the Court of Appeal's decision in Global Feedback [2025] EWCA Civ 624 which gave a more restricted interpretation of Article 9(3) than had previously been adopted.
- **Celia Reynolds** covers the English Devolution and Community Empowerment Bill, devolution, and the potential impacts upon planning and development.
- **Daniel Kozelko** looks at the decision in *Mole Valley DC v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 2127 (Admin) and whether recent changes to the NPPF 2024 have altered how assessment of development which is 'not inappropriate' in the Green Belt is approached.
- Lastly, **Jake Thorold** addresses *R (Caffyn) v Shropshire Council* [2025] EWHC 1497 about the environmental effects of a proposed intensive poultry unit and the ramifications for how planning decision-makers should assess "in-combination" environmental impacts in circumstances where multiple intensive livestock units are located in close proximity to one another.

We are also very pleased to see the hard work of the PEP team recognised in the 2026 Legal 500 rankings with our new and improved "Tier 2" planning ranking as a set. We know how much hard work goes into this from our members and clerks.

We do hope you enjoy this edition of the PEP newsletter and have a productive Michaelmas term.

The Pandemic and Planning Uses

Richard Harwood OBE KC
Call 1993 | Silk 2013

What is the effect of the Covid lockdowns and restrictions on businesses on the commencement of uses and the running of time in planning enforcement? I pondered this point at the start of the crisis in our April 2020 **newsletter**. Five years later, there is a surprising shortage of authority, but what there is suggests a pragmatic approach.

It is worth having in mind that the Business and Planning Act 2020 introduced short term extensions for commencement periods in England. If a condition required development to commence between 19 August 2020 and 31 December 2020, the deadline was extended to not later than 1 May 2021.[1] If the implementation period had expired between 23 March 2020 and 18 August 2020 then a person with an interest in the land could apply for an 'additional environmental approval' to resurrect the planning permission.[2] If the deadline for submitting reserved matters expired between 23 March 2020 and 31 December 2020, then this was extended to 1 May 2021.[3] That aside, the usual legislation applies.

Where the alleged breach of planning control is making a material change of use (other than of a building to a dwellinghouse) a failure to comply with a condition which had started before April 2024, the breach becomes lawful after 10 years: Town and Country Planning Act 1990, s 171B(3).

For the time limit to be met, the breach at the end of the ten years must be the same breach. So, whilst language of continuity is not used in the legislation, if a breach ends and then a fresh breach commences within the 10-year period, then the second breach cannot rely on the first to be lawful. There needs to be 'a continuing breach over the whole of the 10-year period'.[4] Where there are gaps in the occasions that the breach was being carried on, a judgment needs to be made as to whether it is still the same breach.

For the time limit to run, it must be possible for the local planning authority to take enforcement action at that time: *Thurrock Borough Council.*[5] Mere intention is not a breach of planning control and so cannot lead to time running.[6] Once a breach has started, then a cessation of the activity might not end the breach. In *Basingstoke & Deane* a house had been occupied in breach of an agricultural occupancy condition. After that breach started it was vacant for a year because of extensive refurbishment works before being reoccupied by a non-agricultural worker. There was a further two-month gap between tenants within the claimed ten-year period. Collins J upheld the Inspector's decision that the ten-year period had been met.

Consequently, it may be relevant to the continuity of a breach not simply whether the activity is being carried out, but what is happening around the breach, especially at times when the activity itself is not being carried out. The effect of refurbishment works arose in *London Borough of Islington v Secretary of State for Housing, Communities and Local Government* [7] where the basement of an office had been let for residential use for six months, then renovated for three months before then being let out (after further works) three months later for residential purposes. The renovation had 'gutted' the basement back

1 Town and Country Planning Act 1990, ss 93A, 93E inserted by Business and Planning Act 2020, ss 17, 18.
2 Town and Country Planning Act 1990, ss 93B, 93F inserted by Business and Planning Act 2020, ss 17, 18.
3 Town and Country Planning Act 1990, ss 93D inserted by Business and Planning Act 2020, s 18.
4 *Basingstoke and Deane Borough Council v Secretary of State for Communities and Local Government* [2009] EWHC 1012 (Admin) at para 25 per Collins J.
5 *Thurrock Borough Council v Secretary of State for the Environment* [2002] EWCA Civ 226, [2002] JPL 1278.
6 *Swale Borough Council v First Secretary of State* [2005] EWCA Civ 1568.
7 [2019] EWHC 2691 (Admin).

to a shell, at which point it would not have been possible to tell what the use was.[8] Lang J held that the Inspector had unlawfully used a presumption in favour of continuance of the use.

Restrictions on access in the countryside arose in *Miles v National Assembly for Wales* [9] where use of land for recreational motorcycling activities was said to have become lawful by 10 years' use. Dismissing a broad-brush challenge, the High Court held that the Inspector had been entitled to hold that a cessation of motorcycling activities for about 18 months due to the outbreak of foot and mouth disease was 'an interruption of such significance to stop the accrual of immunity from enforcement'.[10]

Only one judgment has considered the effect of Covid measures on the ability to carry on uses. *R(Jones) v Isle of Anglesey County Council* [11] concerned whether a cricket clubhouse had changed to use as a visitor information centre within the commencement period which expired in April 2021. The conversion works were 'identified as cleaning, painting, filling and decorating, installation of a carpet, signage, tables and chairs' but at the time Covid restrictions prohibited the use. The Council considered it was difficult to see what more could be done and associated steps, such as signage, were sufficient to show the use had commenced.

The claimant contended that the use had not commenced: the Covid restrictions were not relevant, or if they were, they prohibited actual use and so any change of use. Mould J held the Council was correct.[12] The physical state of the building was a factor in determining its use as was the absence of an actual use.[13] However the Covid restrictions were a factor in favour of finding that the use had commenced: 'the visitor information centre at the Bailiff's Tower, although fitted out and ready to do so, was not lawfully able to admit visitors prior to the expiry of the period'.[14] The impact of the Covid-19 restrictions on the actual use was obviously relevant and was on the evidence the sole reason why the actual use had not commenced.[15]

Jones addressed Covid restrictions in one context: whether a use had commenced. The point though does have wider relevance. It indicates a pragmatic approach to an extraordinary situation. As Covid restrictions were relevant to a use commencing (without actual use), they would be relevant to whether the use continued and so, if unlawful, it could be enforced against. There would also be relevance to the continuation of a breach of condition which related to the use. Whether a distinction should be drawn between instituting or maintaining a lawful use and time accruing for an unlawful use, might be debated.

The individual facts will also be important: were there other matters (works, signage, website) relating to the use or breach of condition when the actual use was not taking place? Was any break because the use was prohibited by Covid legislation, because the Covid restrictions made it uneconomic (for example, for business district coffee shops), staff issues or the general state of the business?

Richard Harwood KC is the author of ***Planning Enforcement*** (3rd Edition, 2020), published during the first lockdown.

8 TSee para 4 to 8 per Lang J.
9 [2007] EWHC 10 (Admin).
10 At para 38 per Lloyd-Jones J.
11 [2024] EWHC 2582 (Admin).
12 Para 51.
13 Para 52-53.
14 Para 60.
15 Para 61, 62.

Cotham School v Bristol City Council [2025] EWHC 1382 (Ch)

Matthew Wyard
Call 2014

This decision is of interest to those practising at the cross sections of property and public law, particularly in the education sector. It is the third reported successful claim for an order under section 14(b) of the Commons Registration Act 1996 to delete land from the commons register.

Cotham School (**"the School"**) is an academy school situated in North West Bristol. In 2011 it was granted a long lease of land known as Stoke Lodge playing fields (**"the Land"**) by Bristol City Council (**"the council"**) to use as school playing fields. The Land itself had been acquired by the council for educational purposes. In August 2023, the Land was registered as a town green granting local inhabitants the right to use the Land for lawful sports and pastimes (*Oxford City Council v Oxfordshire County Council* [2006] 2 AC 674 at [35]). The High Court's decision in *Cotham School v Bristol City Council* concerned an application by the School, brought under CPR Part 8, for an order under section 14 of the Commons Registration Act 1965 amending the commons register to remove the Land, thereby allowing the School greater control over regulating access to the Land.

In seeking to remove the Land from the commons register the School's primary contentions were:

1) That the Land was held for educational purposes and that its registration as a town green was incompatible with that statutory purpose.
2) That signs were erected on the Land which were sufficient to render use of the Land as contentious and not "as of right".
3) Its objections raised to the registration as a town green in 2011 (the first application that was made for registration) rendered it contentious.
4) The terms of the lease rendered use of the Land by the public by permission so it could not be "as of right".
5) Use of the Land by the public was not continuous throughout the 20 year period relied on the by local residents as they had been prevented from access during school sporting events.
6) The inhabitant's use of the Land was not lawful as it was contrary to various pieces of education legislation.

Giving judgment for the School the court found at [270] that the statutory education purpose for which the Land was held was incompatible with registration of the Land as a town or village green. It prevented the physical education of children and also prevented the use of the Land for other educational purposes, including the construction of new premises. Dealing with the other grounds of claim, at [298] the court concluded that the use of signs at two vehicular entrances and at most, if not all, pedestrian entrances, meant that there was a clear boundary to the Land from the public highway. The Land was clearly not an extension of the public roads. Use of the Land by members of the public was therefore contested and not "as of right" during the many years that the signs were on the Land. At [305] the court concluded that objections being raised at a non-statutory public inquiry constituted a sufficient form of protest against unrestricted public access to the Land for the purpose of rendering that access not "as of right". Construing the lease of the Land as a whole, the court did not consider at [308] that it granted any permission or right to use the Land to the local community. The court found at [313] that the local inhabitants had not had unrestricted access to the Land for 20 years, having been excluded during various sporting activities that happened frequently during the school week. At [316] the court found that the inhabitant's interference with school games could not be relied on to establish that the statutory criteria for registration were met.

Accordingly, the Land should never have been registered because it did not meet the statutory criteria [270, 317].

The court concluded that it was just to rectify the register [318-327].

The practical consequences of the judgmentare:

1) That the council had to amend the common register to remove the Land's town green registration.
2) The School may control access to the Land allowing it to be used for educational purposes and restricting access to local residents.

In terms of wider application, the judgment serves as a reminder to schools to ensure that its land is protected. In particular, clear signage should be erected at entrances to land to ensure that it is clearly distinguished from the public highway. A statement should be deposited under section 31(6) of the Highways Act 1980 to protect against land gaining a public right of way through continuous use. Where land is being used for sports or pastimes, consideration should be given to filing a statement pursuant to section 15A(1) of the Commons Act 2006 to bring an end to any period of use for that purpose. Should an application be made for registration of land as a town or village green, objections should be raised and maintained throughout the inquiry process.

Green Lane Association Ltd v Central Bedfordshire Council [2025] EWHC 2251 (Admin)

Ned Helme
Call 2006

Before the Court of Appeal gave judgment in the *Global Feedback* case[16] (covered by Flora Curtis in the **Summer Edition of this newsletter**) there had been a widespread view that the scope of Article 9(3) of the Aarhus Convention,[17] and therefore the scope for costs-capping in so-called Aarhus Convention claims,[18] was very broad indeed, potentially covering all challenges where the decision has an effect or impact on the environment. In *Global Feedback*, the Court of Appeal gave a more restricted interpretation of Article 9(3), finding that it applied only to challenges alleging a contravention of a legal provision which concerns, or is to do with, the environment, its protection or regulation. This is clearly narrower than many had previously understood, but the *Green Lane Association* case, the first reported case applying *Global Feedback*, provides some comfort for claimants that the ambit of Article 9(3) is still broad. It also provides a salutary reminder to defendants of the need to act promptly in challenging whether a claim is an Aarhus Convention claim or seeking to vary the standard limits on maximum costs liability.

Background

In the *Green Lane Association* case, the Claimant had challenged an experimental traffic regulation order ("the Order"), which was published on 20 March 2025 and came into effect on 27 March 2025, and which imposed a blanket prohibition on the use by all motorised vehicles of a byway open to all traffic. The claim was brought under Schedule 9, Part VI, paragraph 35 of the Road

16 *HM Treasury v Global Feedback Ltd* [2025] EWCA Civ 624.

17 The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998.

18 Under CPR Part 46, Section IX.

Traffic Regulation Act 1984 ("the RTRA 1984").

CPR Rule 46.27(5)(b) requires that an application by a defendant to vary the standard Aarhus costs limits must be made in the acknowledgment of service ("AoS"). Likewise, CPR Rule 46.28(1)(a) provides that (where a claimant has complied with rule 46.25(1), which it had in this case, and subject to rule 46.25(2) and (3), which were not applicable) the costs capping pursuant to rule 46.26 applies unless:

i) the defendant has in the AoS denied that the claim is an Aarhus Convention claim and set out its reasons; and

ii) the court has determined that the claim is not an Aarhus Convention claim.

The Defendant had raised questions about the claim falling under Aarhus protection provisions in its pre-action protocol response, but when it came to its AoS, it did not deny that the claim was an Aarhus Convention claim or apply to vary the standard costs limits. However, the Defendant thought again once the Court of Appeal had given judgment in *Global Feedback* and applied for a declaration that the claim was not an Aarhus Convention claim, or in the alternative, that the standard costs cap be increased to £35,000, as well as relief from sanctions under CPR Rule 3.9. The Defendant's application was heard by Karen Ridge (sitting as a Deputy High Court Judge) on 31 July 2025 and was dismissed in a judgment of 2 September 2025.

The Application for Relief from Sanctions

The application for relief from sanctions was given short shrift by the Judge. She emphasised that the Aarhus costs regime and rules seek to provide reasonable predictability at the earliest opportunity and to resolve any disputes about whether or not a claim has the benefit of Aarhus costs protection early on in proceedings. The rules place clear demands on both parties and those rules are strict so as to ensure reasonable predictability at an early stage.

The Claimant had complied with the rules, but the Defendant had not addressed the Aarhus issues in its AoS and it accepted that it could not advance a good reason for this. The fact that the Court of Appeal's decision in *Global Feedback* postdated the Defendant's AoS was not, in the Judge's view, a good reason, since it could have disputed the Aarhus Convention claim at the AoS stage and reserved its position. The fact that the Defendant had previously raised questions about the claim falling under Aarhus protection provisions in its pre-action protocol response also did not assist the Defendant. The Claimant would have been entitled to rely on, and no doubt relieved to receive, an AoS in which the Defendant did not indicate that it wished to dispute costs protection. The Claimant had automatically benefitted from costs protection on filing of the claim and had reassurance from the AoS that that protection was not in dispute. That reassurance had continued for a further 21 days after the AoS had been filed before the application was made.

Applying the three-part test in *Denton*,[19] the Judge found that the breach was a serious and significant one with no good reason for the delay. She accepted that the application was filed at an early stage, but noted that there was no permission stage for this type of claim, so it was likely that material costs had been incurred by both parties in prosecuting and defending their respective cases in preparation for a substantive hearing. There was therefore some force in the Claimant's submission that there was general prejudice to public administration and the overall need to ensure procedural rigour given the circumstances of the case. The Judge therefore concluded that relief should not be granted and the application to extend time for both applications should be refused.

Whether the Claim was an Aarhus Convention Claim

Notwithstanding her decision on the application to extend time, the Judge nonetheless went on to

19 *Denton v TH White Ltd [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926.*

consider whether the claim fell within the Aarhus provisions in any event, finding that it did.

The challenge had been brought under paragraph 35(a) of Schedule 9 to the RTRA 1984, namely on the basis that the making of the Order was "not within the relevant powers", and was based on 5 grounds, as follows:

i) the Order was ultra vires because it was not made for experimental purposes;

ii) the Defendant failed to give reasons for making the Order and in particular, for proceeding by way of an experimental order;

iii) failure to discharge the duty under section 122 of the RTRA 1984 in that there was no balance performed;

iv) failure to carry out lawful consultation; and

v) failure to comply with the Public Sector Equality Duty.

The Judge found that the test for assessing whether or not the claim fell within an Aarhus Convention claim was met by asking whether sections 1, 9 and 122 of the RTRA 1984 are "provisions of national law relating to the environment" as that phrase was interpreted in *Global Feedback*.

The stated purpose in section 122 is to secure the expeditious, convenient and safe movement of traffic and ensure suitable parking provision. The Judge accepted that, when that headline purpose is considered in isolation, at first blush there is no reference to the protection or regulation of the environment. However, the Judge found that section 122(2) specifically directs the decision maker to take other matters into account, including the "amenities" of any locality affected and more particularly, recognition of the importance of regulating and restricting the use of some roads by heavy commercial vehicles "so as to preserve or improve the amenities of the areas through which the roads run". That last clause could be clearly inferred to be referring to residential amenity in terms of the living conditions of residents and visual amenity in terms of the effect on the character and appearance of an area, which in the Judge's view were "patently environmental matters" and she found it clear that when section 122 is read as a whole it is "directed at making decisions with environmental considerations at the forefront of the decision maker's mind". Similarly, section 122(2) directs that regard must be had to the national air quality strategy, another environmental consideration. The Judge found it clear that the requirement to take those particular factors into account is with the aim of protection or regulation of the environment. She drew similar lessons from the wording of section 1(1).

The Judge was therefore satisfied from the wording and aims of the legislation that the national law alleged to have been contravened provides for regulation of the highway network for a number of reasons, several of which relate to environmental protection. She also noted that the Defendant's own reasons cited for the making of the Order included environmental matters, which lent support to the Claimant's arguments that the national law in issue was a provision relating to the environment. Similarly, the Defendant's assertions that the claim would not have significant environmental benefits but would lead to further environmental harm pointed to the Order having an environmental purpose.

The Judge therefore concluded that each of the grounds of claim (with the possible exception of the final ground, relating to the Public Sector Equality Duty) alleged contraventions of national law which relate to the protection or regulation of the environment. As such the claim fell "squarely within the Aarhus Conventions costs protection regime".

Comment

The *Green Lane Association* case is one decision in one particular statutory context. It will nonetheless give some comfort to claimants that the narrowing of the understanding of the concept of an Aarhus Convention claim brought about by the Court of

Appeal's decision in the *Global Feedback* case has still left a broad scope for Article 9(3) of the Aarhus Convention and the associated costs-capping rules. The *Green Lane Association* case also provides important lessons for both claimants and defendants in, first, considering carefully whether a challenge does allege a contravention of a legal provision which concerns the protection or regulation of the environment and, second, in ensuring full compliance with the strict set of procedural rules under CPR Part 46, Section IX.

The English Devolution and Community Empowerment Bill and planning

Celia Reynolds
Call 2022

The "English Devolution and Community Empowerment Bill", published on 10 July 2025, is set to be one of the most significant reforms of local government since the Local Government Act 1972. Given its extensive nature, this summary does not address every aspect of the Bill which may be of relevance or interest. Instead, it focusses on those aspects of the bill which impact upon planning and development.

Framework for Devolution

The Bill describes new devolution structures, introducing a category of authority in England, the "Strategic Authority" ("SA"). While this is a new term, it is intended to encompass pre-existing combined authorities, combined county authorities, and the Greater London Authority. SAs will not replace councils but are intended to tackle sub-regional issues and capitalise on opportunities that exist over a significant geographical area. To streamline devolution, the Bill provides for three levels of devolution: foundation, established, and mayoral – reflecting the government's strong preference for partnerships that bring together more than one local authority together over a large area, led by a mayor. The Bill provides for powers within the Devolution Framework to be given automatically to each SA depending on the level reached, with established mayoral SAs receiving the most devolved powers from Westminster.

In many respects, the aims of the Bill dovetail with changes proposed in the Planning and Infrastructure Bill. All strategic authorities will have a duty to publish a spatial development strategy which sets out the vision for development across the area. SAs will further have authority over transport and local infrastructure and housing and strategic planning.

Mayoral SAs will be conferred with Mayoral Powers of Competence, a suite of powers intended to help drive growth, collaboration and improvement across geographies. The bill will extend the Mayor of London's development management powers to SA mayors:

- Mayors will have the power to intervene in planning applications of strategic importance and the ability to call in these applications.
- Mayors will be able to charge developers a Mayoral Community Infrastructure Levy if they have a Spatial Development Strategy in place.
- MSAs will be able to designate a Mayoral Development Area and subsequently establish a Mayoral Development Corporation for that area. MDCs are statutory corporate bodies which can take broad planning and land assembly powers and have the ability to attract inward investment. The designation of an MDC will be subject to a simple majority of voting members of the SA, where the mayor must also be in the majority.

Mayors of SAs will also be able to grant pre-emptive planning permission for a particular development by way of a 'Mayoral Development Order' ("MDO"), instead of relying on an application being submitted. Currently, mayors require the

consent of LPAs before an MDO will be created. The Bill removes those requirements, although an LPA can refuse to approve the order, which is likely to be dealt with through an inquiry procedure.

Local Authority Governance

Previously, councils in England were able to choose between three different governance models: Mayor and Cabinet, Leader and Cabinet, and the committee system. The Bill prevents the creation of any new local authority mayors. Those councils operating a committee system will move to operate a leader and cabinet model. A one-year transition period has been proposed from the coming into force of the legislation. Remaining councils with existing mayors will have the option to continue with an elected mayor or transition to a leader and cabinet model.

This likewise reflects changes already proposed in the Planning and Infrastructure Bill, which provided for specific planning functions to be delegated to planning officers for a decision. The apparent aim of the Bill is to streamline decision-making by focussing on new systems of executive governance. The Government considers that the abolition of the committee system will *"provide clarity on responsibility and accountability and improve efficiency in decision-making."*

Mole Valley DC v Secretary of State for Housing, Communities and Local Government [2025] EWHC 2127 (Admin)

Daniel Kozelko
Call 2018

Introduction

Have recent changes to the NPPF 2024 altered how assessment of development which is 'not inappropriate' in the Green Belt is approached? That was the question that the first ground of appeal in the *Mole Valley DC* case considered. Here the claimant Council brought challenges under both ss.288 and 289 TCPA 1990 to the decision of an Inspector to quash an enforcement notice, and grant planning permission, for the stationing of residential caravans and touring caravans for residential purposes on land in the Green Belt.

The Framework

Critical to the case was para 153 of the 2024 National Planning Policy Framework, and the new footnote 55. These provide:

> *153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness55. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.…*
>
> *Fn 55. Other than in the case of development on previously developed land or grey belt land, where development is not inappropriate.*

The arguments

In considering the applicant's challenge to the enforcement notice and refusal of planning permission, the Inspector concluded that the land in question was 'grey belt'. As a result, the Inspector went on to conclude:

> *16. I have had regard to the matters raised regarding the effect of the development in terms of openness. However, openness is one of the essential characteristics of the Green Belt and, as a matter of policy, the aim of preserving the openness of the Green Belt cannot be compromised by development that is 'not inappropriate'.*

It was this passage that the Council said incorrectly applied para 153 and footnote 55. Rather, it argued that the new footnote merely removed the requirement to accord 'substantial weight' to any harm to openness caused by 'not inappropriate' development, but that assessment of openness was still required. Thus, in concluding that openness cannot be compromised by 'not

inappropriate' development at all, the Inspector had materially erred. In response, the defendant Secretary of State argued this was a misreading of these paragraphs and their amendment and, crucially, that this was precisely the argument rejected by the Court of Appeal in 2016 in *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404.

The judgment

The judge (Choudhury J) rejected the Council's arguments on this ground. He first considered *Lee Valley*. In that case Lindblom LJ had rejected the argument that the predecessor to para 153 should be read as requiring a consideration of openness of the Green Belt, and its purposes, whether or not the development was 'not inappropriate'. He concluded that the paragraph had to be read in the context of all of the Framework's policy on Green Belt, and particularly the distinction between 'inappropriate development' which is 'by definition, harmful', and development which is 'not inappropriate' and thus not harmful. In short, once a development is 'not inappropriate' then 'the question of the impact of the building on openness is no longer at issue'. Choudhury J considered that this guidance was clearly of general application, and provided a complete answer to the Council's case.

As a result, the Council went on to argue that *Lee Valley* was no longer good law as it had been based on the earlier decision in *R (on the application of Timmins) v Gelding BC* [2014] EWHC 654, which had itself been disapproved of in R (on the application of *Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire CC* [2020] UKSC 3. Choudhury J rejected this as, while the approach to assessing openness in *Timmins* had been disapproved (as it inappropriately excluded issues of visual impact from openness), Lindblom LJ did not rely on those passages of *Timmins* for this point in *Lee Valley*. Indeed, key passages of *Lee Valley* had themselves been approved of by Lord Carnwath JSC in *Samuel Smith Old Brewery*. In any event, the proper approach to the test of openness was immaterial to **when** the effect on openness would be assessed. The distinction between 'inappropriate' and 'not inappropriate' development was a distinct issue.

Having established *Lee Valley* remained good law, the judge rejected the Council's case on ground 1. He went on to note that the approach adopted by the Inspector was the straightforward one and did not require a strained reading of the Framework. Indeed, the Council's case would have represented a fundamental departure from the long-established approach to Green Belt and development within it (going back to PPG2). Something far more than the wording change and footnote 55 was required for there to have been the substantial change that the Council's position would require.

As to footnote 55 itself, Choudhury J rejected the suggestion that the *Lee Valley* approach rendered it otiose. Taking the proper approach to interpretation, footnote 55 is simply to clarify that a reduction of openness on previously developed land or grey belt land is not harm to openness for Green Belt policy. This is practical clarification, and carves out an exception for such previously developed land and grey belt land from the broad statement that substantial weight should be given to any harm to the Green Belt. Indeed, the oddity of the Claimant's approach would be that it would undermine the policy approach of giving substantial weight to any harm to the Green Belt whatever its extent. That approach does not accord with para 153, the historic approach to Green Belt, and introduces uncertainty and complexity into what should be a straightforward exercise.

Finally, the judge noted that the Council's position would undermine the very purpose of the grey belt exception which has been introduced to the Framework. That policy was intended to permit construction on Green Belt which was not previously permitted. The Claimant's approach would substantially undermine that permissive policy if an assessment of harm to openness were still required. As a result, the Inspector's approach was entirely appropriate.

Comment

This judgment is useful as it emphasises that the introduction of grey belt was simply an introduction of another situation where development would be 'not inappropriate' in the Green Belt, and did not herald a broader change to Green Belt policy. While footnote 55 might at first look otiose, it is practical guidance that reminds us that, while grey belt (and previously developed land) remains Green Belt, it is Green Belt for which all development is 'not inappropriate'. It is thus distinct to para 154 of the Framework, which sets out exceptions based on the type of development proposed; grey belt is an exception based on the nature of the Green Belt land upon which development is proposed.

R (Caffyn) v Shropshire Council [2025] EWHC 1497

Jake Thorold
Call 2020

As neatly summarised by Mr Justice Fordham in the first sentence in his judgment in *R (Caffyn) v Shropshire Council* [2025] EWHC 1497, "[t]his case is about the approach taken by a local planning authority (LPA) to the environmental effects of proposed intensive poultry units (IPUs) at a Shropshire farm".

But *Caffyn* is also about a great deal more than that. In particular, it has important ramifications for how planning decision-makers should assess "in-combination" environmental impacts in circumstances where multiple intensive livestock units are located in close proximity to one another.

The Facts

The facts can be stated shortly. A farmer applied to Shropshire Council for planning permission to expand an intensive poultry unit.

To assess the application, the Council completed an environmental impact assessment and appropriate assessment under the Habitats Regulations 2017. Having completed these assessments, the Council decided to grant planning permission for the expansion.

The Claimant Dr Caffyn, a local resident and board member for the campaign body River Action, brought judicial review proceedings against the Council's decision, arguing (among other things) that:

1) The Council's environmental impact assessment had failed lawfully to assess the environmental effects of the spreading of the manure that would arise from the expansion in digestate form.
2) The Council's appropriate assessment was unlawful for failing to properly consider the in-combination effects of the unit with the effects of other nearby intensive poultry units.

The Judgment

On issue 1, Mr Justice Fordham concluded that the Council had not lawfully assessed the effects of spreading digestate (i.e. manure which had gone through a process of anaerobic digestion) on land owned by third parties. The Council had been required to consider this because, in the judgment of Mr Justice Fordham, the effects of such spreading were potentially "likely indirect effects" on watercourses in the manner explained by the Supreme Court in *R (Finch) v Surrey County Council* [2024] UKSC 20. Although it could not be said that spreading would inevitably have environmental impacts, ultimately it could not be said that this was incapable of assessment – the Council simply hadn't attempted to.

On issue 2, Mr Justice Fordham concluded that, in assessing the in-combination effects of the proposed development for the purposes of the Habitats Regulations 2017, the Council had erred in only considering other intensive poultry projects which required new planning permissions, but

excluding existing projects which needed a new or varied environmental permit (i.e. to enable it to house more chickens). In the view of Mr Justice Fordham, those projects would generate new cumulative effects which should have been factored into the in-combination assessment – in short, to exclude them on the basis they concerned environmental permits as opposed to planning permissions was wrong. As put by Mr Justice Fordham, "[t]o the habitat and its species, there is no material distinction on who hands out the permit".

Comment

In respect of issue (1), this case demonstrates that – in a post-Finch world – the extent of matters which a local planning authority may be required to consider has considerably broadened. In *Caffyn* the local planning authority simply hadn't addressed the issue of digestate spreading on third-party land, but post-Finch the Court couldn't let that slide. As explained by Mr Justice Fordham:

> *"It is within the "area of evaluative judgment" for the decision-maker to take its own, reasonable view as to whether possible effects are "capable of assessment". But I do not have any reasoned explanation of a position on this, from planning officers. I am quite unable to uphold as reasonable the drawing of a line, when I have no reasoned evaluation as to why it was drawn. Where – at least in the circumstances of the present case – there is an unaddressed evaluative question belonging to the primary decision-maker, the right course is to quash the decision and remit the matter for reconsideration of that question."*

In respect of issue (2), Mr Justice Fordham's judgment emphasises the broad meaning of the phrase "in combination with other plans or projects" in regulation 63 of the Habitats Regulations. It will not be sufficient for local planning authorities to consider only plans or projects which come within their purview; rather, the implication of *Caffyn* is that they need to cast the net widely to even include consideration of other legislative regimes administered by other regulatory bodies (in this case the environmental permitting regime). As put by Mr Justice Fordham:

> *"The existence of a parallel control regime – or another competent authority – is not a basis for confining and limiting the scope of an assessment which the LPA is statutorily obliged to conduct. Still less, where the whole point is to identify real world, in-combination effects. If each competent authority or species of competent authority considers only its own consented projects, there will be a disjointed habitats lacuna, in a holistic-effects protection regime."*

So let this be a cautionary tale: don't count your chickens if you haven't properly assessed their downstream or in-combination effects…

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Richard specialises in planning, environment, art and public law, acting for developers, landowners, central and local government, individuals and interest groups. He appears in the courts, inquiries, examinations and hearings, including frequently in the Planning Court and appellate courts. He has appeared in many of the leading cases of recent years including four Supreme Court cases since 2020.

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Celina regularly acts for and advises local authority and private sector clients in all aspects of Planning and Environmental law including the Community Infrastructure Levy (CIL) regime, Highways Law, Sewers and Drains and National Infrastructure. She appears in Planning Inquiries representing appellants; planning authorities and third parties as well as in; the High Court and the Court of Appeal in respect of statutory review challenges and judicial review cases. She also undertakes both prosecution and defence work in respect of planning and environmental enforcement in Magistrates' and Crown Courts as well as Enforcement Notice appeals. She specialises in all aspects of Compulsory Purchase and compensation, acting for and advising acquiring authorities seeking to promote such Orders or objectors and affected landowners. Her career had a significant grounding in national infrastructure, airports and highways projects and she continues those specialisms today – *"dedicated, very analytical and keen for precision… She is very much considered to be a leading figure in the legal planning world."* Chambers Directory 2023. She was awarded Legal 500 Planning and Land Use Junior of the Year 2024.

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Daniel has a mixed practice incorporating planning, environmental, and public law. His instructions have included: acting in proceedings to obtain a certificate of lawfulness of existing use or development; advising on material changes of use of land in the context of retail developments; and, work on matters involving damage to utilities and highways. In 2019-2020 Daniel was a judicial assistant to Lord Carnwath and Lady Ardenat the Supreme Court of the United Kingdom. In the course of that secondment Daniel worked on a number of cases raising planning and environmental issues, including *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire CC* [2020] UKSC 3 and *Dill v Secretary of State for Housing, Communities and Local Government and another* [2020] UKSC 20.

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Jake accepts instructions across all of Chambers' practice areas with a particular interest in public, planning and environmental law. In 2021-2022 Jake was a Judicial Assistant at the Supreme Court of the United Kingdom and Judicial Committee of the Privy Council, assigned to Lord Sales and Lady Rose. In this role Jake was involved with some of the most important planning cases of the year, including *Hillside Parks Ltd v Snowdonia National Park Authority* and *DB Symmetry v Swindon Borough Council.* Jake is currently instructed on a number of planning matters, including as sole counsel for three residents groups in the South Kensington Tube Station Inquiry.

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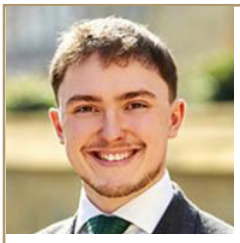

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Christopher has a particular interest in planning and environmental work and is ranked in the 2026 Legal 500 as a Rising Star. He regularly appears in court, inquiries and hearings as sole or junior counsel and acts for local authority, private sector, and third sector clients. His recent instructions have included representing a local authority at a multi-day enforcement inquiry covering 4 linked appeals, advising claimants and local authorities on matters including rights of way and related issues as well as s.73 applications raising *Hillside* problems. Christopher has also gained experience advising on the intersection of planning, public, and contract law by working with Jonathan Seitler KC to advise a local authority on potential challenges to the tabling of a commercial offer to purchase a significant parcel of land. .

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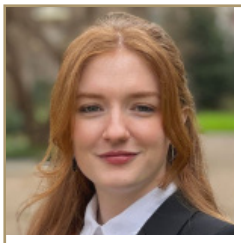

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Celia accepts instructions across all areas of Chambers' practice, and is keen to grown a practice in public, planning and environmental law. She is currently being led by Daniel Stedman Jones in respect of an appeal against the refusal of a planning application for the development of 580 dwellings. She has also been instructed to advise and draft pleadings for judicial review in relation to other environmental law matters.

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