

Environmental Law Update

39 from 39
Episode 9

Programme

- **Stephen Tromans QC – Chair’s Introduction**
- **Celina Colquhoun – Air Quality**
- **Rachel Sullivan – Climate Change**
- **Stephen Tromans QC – Other cases of interest**

“The government is fully committed to tackling air pollution and that is independent of being a member of the EU.”

10 MARCH 2020 - ENVIRONMENT BILL POLICY FACTSHEET PT 4

AIR QUALITY LEGAL FRAMEWORK

- **AQ DIRECTIVE 2008** - Ambient Air Quality Directive sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM10 and PM2.5) and nitrogen dioxide (NO₂); direct effects, and can combine in the atmosphere to form ozone
- **Air Quality Standards Regulations 2010**
- **Environment Act 1995 – Pt IV LAQM**
- **Clean Air Act 1993**

ESSENTIAL CASES:

CLIENT EARTH - NATIONAL AQ PLANS/AQ DIRECTIVE

- Reference case – Case C-404/13 and SC judgment 2015
- Client Earth No1 - 2016
- Client Earth No 2 and 2A - 2017
- Client Earth No 3 – 2018

ESSENTIAL CASES:

SHIRLEY 1 & 2 AND GLADMAN - AQ **DIRECTIVE AND PLANNING - TCPA 1990**

- SHIRLEY & RUNDELL (SHIRLEY 1) – 2018 (DOVE J) ; 2019 (CA) ;
- GLADMAN – 2017 (SUPPERSTONE); 2019 (CA
- SHIRLEY 2 – 2018 (ADJ PART HEARD SUPPERSTONE); 2020 CO

[NB - CLIENT EARTH & LOCAL PLANS?]

ESSENTIAL CASES:

SPURRIER V SST – HEATHROW RUNWAY NPS CHALLENGE

- 2019 – CITED SHIRLEY 1
- 2020 PLAN B CA CHALLENGE DID NOT
ARGUE AQ GROUNDS

[NB – challenge to RIS2]

PRINCIPLES:

- AQ DIRECTIVE
- Binding commitments UK aimed at "defining and establishing objectives for ambient air quality to avoid, prevent or reduce harmful effects on human health and the environment as a whole" (Arti 1(1)) and "maintaining air quality where it is good and improving it in other cases" (article 1(5)).

PRINCIPLES:

- CLIENT EARTH – AQ DIRECTIVE AND AQ PLANS
- SHIRLEY & GLADMAN – AQ AS PLANNING CONSIDERATION UNDER TCPA 1990
- SPURRIER – PA 08 - DELIVERABLE SCHEME WHICH HAD TO ACCORD WITH AQD
- SHIRLEY – DUTIES OF LPA re AQ &

QUO VADIS?

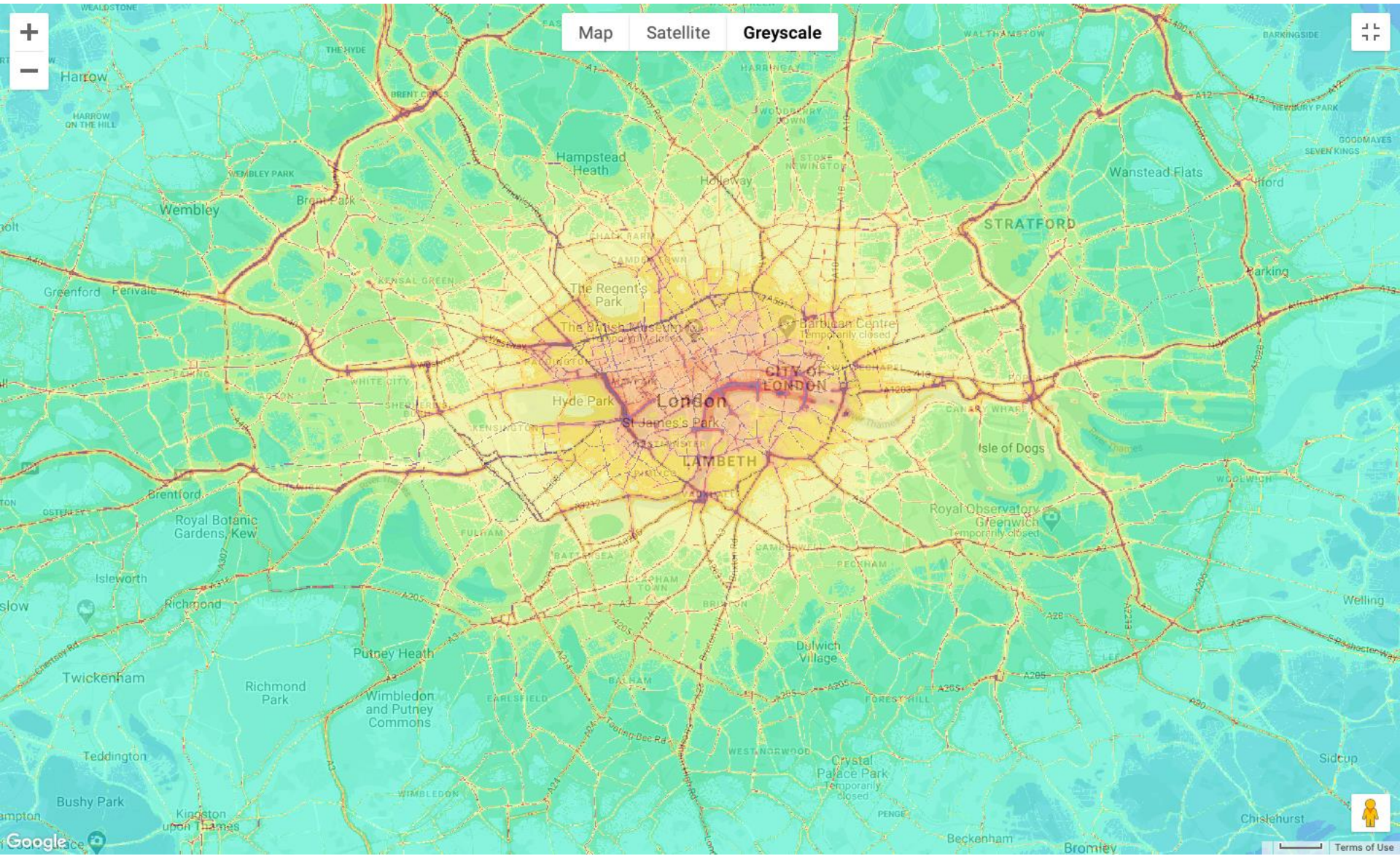
- 2017 UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations (the NO2 plan)
- 2019 Clean Air Strategy
- 2020 Environment Bill

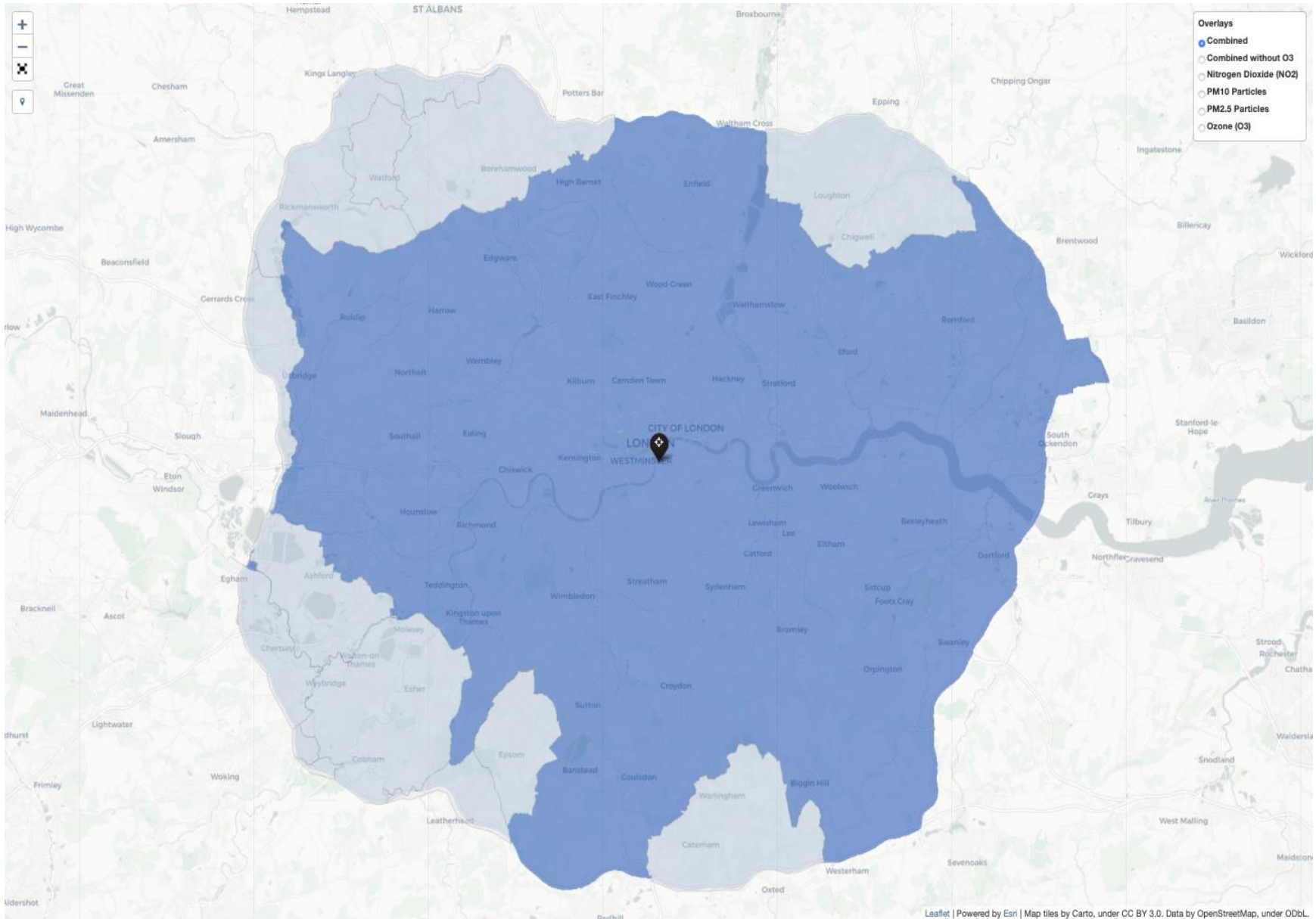
ENVIRONMENT BILL - AQ

- DUTY TO SET TARGETS BY 2020 (CI1)
 - AQ = priority area
 - reduce the ann average level PM2.5 (CI2)
 - “long-term target” minimum 15 yrs
- SPECIFIC SoS DUTY TO ENSURE PM2.5 TARGET MET (CI 4)

ENVIRONMENT BILL - AQ

- PART IV – AIR QUALITY & MV RECALL
 - AMENDS EA 1995 AND LAQM REGIME
 - AMENDS CLEAN AIR ACT 1993
 - NEW POWER RE MOTOR VEHICLE RECALL





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Climate change in the courts



R (Plan B Earth & ors) v Secretary of State for Transport

- [2020] EWCA Civ
- Challenge to third runway at Heathrow
- Climate change grounds: whether adoption of ANPS unlawful given UK commitment to the Paris Agreement
- Yes – for various reasons (s. 5(8) and s. 10(3) Planning Act 2008) but in effect: government required to consider own policy

Packham v Secretary of State for Transport

- [2020] EWHC 829 (Admin)
- Challenge to decision to proceed with HS2, including on grounds that failed to consider climate change issues
- Accepted had taken into account commitments to Paris Agreement but not taken account of importance of reducing cumulative burden of carbon emissions up to 2050
- Permission refused

R (ClientEarth) v Secretary of State for Business, Energy and Industry

- [2020] EWHC 1303 (Admin)
- JR of decision to grant DCO for two gas-fired generating units
- Panel recommended consent withheld on the basis of environmental impacts – SoS accepted adverse impacts but concluded outweighed by need

Other cases of interest

- Waste shipment offences
- Waste exemptions
- Legal privilege



Waste Shipment Offences

- *R v. Biffa Waste Services Ltd* [2020] EWCA Crim 827
 - Nature of offence of shipment to non-OECD countries
 - What evidence is relevant on whether level of contamination is more than minimal
 - Admission of bad character evidence in response to evidence on character of company

Waste exemptions

- *R v. Mustafa and others* [2020] EWCA Crim 597
 - Exemption for waste wood
 - To be exempt must not only be registered but must also satisfy specific conditions of exemption and be consistent with the relevant objectives of the Waste Framework Directive
 - that it does not endanger human health or harm the environment

Legal advice privilege

- *R (Jet2.com Ltd) v. Civil Aviation Authority*
[2020] EWCA Civ 35
 - Consideration of authorities by Court of Appeal
 - Application of dominant purpose test
 - Legal vs. commercial purpose
 - Significance of lawyers being among recipients
 - Implications

Questions?



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