



INTRODUCTION

Jonathan Darby

Welcome to the latest edition of our Planning, Environment and Property newsletter. This edition highlights two interesting cases with a heritage slant.

First, Richard Harwood QC considers *R (Kinsey) v London Borough of Lewisham*, which is of note for those considering reports to committee and procedure. Second, Stephanie David outlines the parameters of the forthcoming Stonehenge litigation in which five members of 39 Essex Chambers are instructed.

In other news, we are once again be sponsoring the Annual UKELA Conference, which this year is taking place over a whole week from the 14th – 18th June. As a platinum sponsor, we are delighted to be able (for the first time this year!) to

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invite you to join us for an “in person networking hub” following the final day of the conference at the Rooftop Bar & Terrace of Smiths of Smithfield. Arrival is from 3pm and the event runs until 6pm. If you would like to join us, please visit the UKELA website [here](#) for more details and to book a place.

Our Pilot Briefings service remains open and popular for all of our clients to use. To utilise the service, we will require a short email detailing the issues at hand and the questions you would need addressing. On receipt, a 15 minute time slot will be arranged with a member of our established team of silks, senior juniors and juniors, who will be able to discuss the legal query you have. If you would like to book a Pilot Briefing with one of our Planning, Environment and Property experts, then please contact:

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**PLANNING PERMISSION
FOR SYDENHAM HILL
SCHEME QUASHED**
Richard Harwood QC

For The High Court has ruled that a conservation officer's advice was inadequately

reported to planning committee members and a design review panel should have been convened to consider a planning application for a residential redevelopment at the Sydenham Hill Estate, London. Mrs Justice Lang quashed the permission in *R (Kinsey) v London Borough of Lewisham* handed down on 18th May.

The proposed four, six and seven storey high building would be adjacent to Lammas Green housing development, a 1950s set of terraces and community hall, listed at grade II. The committee

report acknowledged that the scheme would cause less than substantial harm to the listed buildings and conservation area. The report had incorporated most of the conservation officer's consultation response in its assessment, but had omitted her views on the level of harm within less than substantial (“moderate to high degree of less than substantial harm” to the conservation area; “moderate degree” to the listed buildings) replacing it with ‘a degree of harm’. Failing to report these downplayed the level of harm. The report also omitted to record that she had objected. This reporting was inadequate. Additionally the planning officer had failed to apply significant weight to the heritage harm when carrying out the balancing exercise.

The Council had declined to provide the conservation officer's response to the public when the application was being considered. The Court held that it should have been disclosed as a background paper under the Local Government Act 1972, s 100D. Lang J rejected the argument that the response was not a background paper because it was produced by the same council department as the final report.

Additionally, the Council's Statement of Community Involvement had promised that applications of this nature would be considered by the Council's Design Review Panel. The Panel had considered the schemes at pre-application stage, but still found a fundamental problem with the last pre-application proposal. They were not consulted on the submitted (and reduced) application. This was a breach of the legitimate expectation created by the SCI.

Richard Harwood QC appeared for Helen Kinsey, instructed by Susan Ring of Harrison Grant.



**STONEHENGE – ONCE
THE CENTRE OF
PREHISTORIC CIVILISATION
NOW AT THE HEART OF
CULTURAL HERITAGE AND
ENVIRONMENTAL LEGAL
BATTLES**

Stephanie David

Between 22-25 June 2021, the High Court is due to hear the judicial review challenge to the Secretary of State for Transport's ("Defendant") grant of development consent for the construction of a dual carriageway ("the Decision") involving major development within the "Stonehenge, Avebury and Associated Sites" World Heritage Site ("WHS"). The claim has been brought by Save Stonehenge World Heritage Site.

Stonehenge and Avebury were inscribed on UNESCO's World Heritage List in 1986: Stonehenge is the most architecturally sophisticated prehistoric stone circle in the world, whilst Avebury is the largest. The WHS demonstrates Neolithic and Bronze Age ceremonial and mortuary practices between 3700 and 1600 BC, as well as prehistoric technology, architecture and astronomy.

Unsurprisingly, the site attracts many visitors (over 1.5 million in 2019) requiring access usually via the A303 – a single carriageway road, which also provides a direct route between the South East and South West.

On 12 November 2020, development consent was granted for the proposed dual carriageway, including a 3.3 km tunnel under the WHS. The proposal has two objectives: (1) to improve connectivity between the South East and South West and (2) to restore the setting of the WHS.

The Claimant alleges that the Defendant's approach to assessing the heritage impact of the Development was unlawful by inter alia failing to:

- i) assess the impact of the Development on individual assets within the historic environment (contrary to planning policy);

- ii) provide a proper evidential basis for disagreeing with the examining authority ("ExA"), which had recommended a refusal due to the substantial and permanent harm to the integrity of the site; and,
- iii) take account of certain mandatory considerations, including an alternative scheme.

The Defendant submits that the approach to heritage was lawful and in accordance with policy; the Claimant's challenge is essentially a disagreement with planning judgement. Likewise, Historic England considers the claim is unarguable – the expert statutory consultee provided ample evidence for the Defendant to reach the conclusion he did.

The second challenge, brought by the Transport Action Network, focusses on the Defendant's 2014 roads policy, which fails to consider the commitments to reduce carbon dioxide and other greenhouse gas emissions in the Paris Agreement. The claim was filed at the end of April but the publicly available information is limited.

These cases are likely to be of significance to those interested in sustainable development, including the preservation of cultural heritage and the environment.

Five members of 39 Essex Chambers are instructed in this important case. Victoria Hutton, led by David Wolfe QC, represents the claimant. James Strachan QC and Rose Grogan are instructed by the Defendant; and Richard Harwood QC and Christiaan Zwart act on behalf of Historic England.

CONTRIBUTORS



Richard Harwood OBE QC

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Richard specialises in planning, environment, public and art law, appearing in numerous leading cases including SAVE Britain's Heritage, Thames Tideway Tunnel, Chiswick Curve, *Dill v SoS* and

Holborn Studios. Recent cases include housing, retail, minerals, environmental permitting, nuisance, development consent orders, and development plans. He is a case editor of the *Journal of Planning and Environment Law* and the author of *Planning Permission*, *Planning Enforcement* (3rd Edition pending) and *Historic Environment Law* and co-author of *Planning Policy*. He is also a member of the Bar Library, Belfast. To view full CV [click here](#).



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Stephanie accepts instructions across all areas of Chambers' work, with a particular interest in planning matters (including environmental offences). Stephanie makes regular court appearances, undertakes

pleading and advisory work and has a broad experience of drafting pleadings, witness statements and other core documents. She has been instructed to advise on a range of matters, including enforcement notices, environmental offences (such as fly-tipping), and applications for planning statutory review. She has also appeared before the Magistrates Court to obtain entry warrants on behalf of Environmental Health Officers. To view full CV [click here](#).



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Jon is ranked by Chambers & Partners as a leading junior for planning law and is listed as one of the top planning juniors in the *Planning Magazine's* annual survey. Frequently instructed as both sole

and junior counsel, Jon advises developers, consultants, local authorities, objectors, third party interest groups and private clients on all aspects of the planning process, including planning enforcement (both inquiries and criminal proceedings), planning appeals (inquiries, hearings and written representations), development plan examinations, injunctions, and criminal prosecutions under the Environmental Protection Act 1990. Jon is currently instructed by the Department for Transport as part of the legal team advising on a wide variety of aspects of the HS2 project and has previously undertaken secondments to local authorities, where he advised on a range of planning and environmental matters including highways, compulsory purchase and rights of way. Jon also provides advice and representation in nuisance claims (public and private), boundary disputes and Land Registration Tribunal matters. To view full CV [click here](#).

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