## INTRODUCTION

Jonathan Darby

Welcome to this week's edition of our Planning, Environment and Property newsletter. We hope that you all enjoyed the fabulous weather over the Bank Holiday weekend, at least to the extent that current circumstances allowed.

In this edition, Richard Harwood QC considers how Covid-19 might impact upon Planning Enforcement and, in particular, the effect of interruptions on the ability to establish lawful use or breach of condition by the passage of time; Stephen Tromans QC highlights the recently published non-statutory guidance on prioritising waste collection services during the pandemic; David Sawtell provides his insight into the Landlord and Tenant Act 1954, commercial leases and Covid-19; and James Burton takes a fresh look at the Heathrow Third Runway case in the Court of Appeal.

We are also still running our free "Quarantine Queries" initiative, which was launched successfully a fortnight ago as a means of assisting solicitors, planning consultants,

## Contents

architects and surveyors who are now working in isolation. Our established team of silks, senior juniors and juniors will be available for a 15 minute timeslot throughout the day to take any legal query you may have, which is time we would ordinarily spend travelling to and from court hearings/ planning inquiries. Should you have a COVID-19 related question or any planning, environmental or property query you would like to discuss, but do not have your colleague to ask at the coffee machine, please contact Andy Poyser or Elliott Hurrell to book a slot.

## PLANNING ENFORCEMENT AND COVID-19

### Richard Harwood OBE QC

The impacts of Covid-19 raise a number of planning enforcement issues. Common sense and reasonable judgment will play an important, but not sufficient, role in seeking to resolve these problems.

In enforcement terms the crisis will have two phases. The first is the lockdown and social distancing period, when certain activities are banned, made impractical by guidance or, conversely, are positively encouraged, such as takeaways and new hospitals.The public mood is supportive of what needs to be done and generally tolerant. Occasional outbreaks of officiousness, more from the police rather than local authorities, tend to be quickly ridiculed away by the press and social media. The second phase will be after the legal restrictions and most practical guidance have been lifted, but businesses and individuals are staggering to recover from the economic impact. Sites may be closed down, sales and trading delayed or temporary uses still continuing. Tolerance of activities which would not usually be permitted may diminish.

One enforcement issue – and the topic of this note – is the effect of interruptions on the ability to establish lawful use or breach of condition by the passage of time.

**Uses carried on without planning permission**

If land is being used without planning permission then to become lawful by passage of time then it must be in that unlawful use for the duration of the relevant four-, five- or ten-year period.[1] The breach of planning control whose lawfulness is being considered must be the same breach of control as at the start of the period. Whether a use is being carried out within this period is synonymous with whether enforcement action can be taken. If at that particular time an enforcement notice could be issued, then time is counting towards the limitation period: see *Thurrock*.[2] There may be periods where the activity is not being carried out but the use continues, for example, because it is the weekend or the factory's summer holiday.[3]

Continuity will be affected by the nature of the breach. For example, a residential use of a building will be taking place if the building is equipped and furnished for domestic use, even if there is no one living there.[4] In some cases there may be gaps in occupation, for example in breaks between tenants or when refurbishment works are being carried out. It will be a matter of fact and degree whether such a period brings the use to an end before the time limit expires.[5] Where the use has become lawful before the break, then a temporary cessation (without any new use intervening) will not end the use.

1 Four years for the change of use of a building to a dwellinghouse and ten years for any other change of use in England and Wales (town and Country Planning Act 1990, s 171B); five years for any breach in Northern Ireland (Planning Act (Northern Ireland) 2011, s 132).

2 *Thurrock Borough Council v Secretary of State for the Environment* [2002] EWCA Civ 226 at paras 15(iii), 25 per Schiemann LJ; *Swale Borough Council v First Secretary of State* [2005] EWCA Civ 1568, [2006] JPL 886 at para 25 per Keene LJ.

3 *Thurrock* at para 28 per Schiemann LJ.

4 See *North Cornwall District Council v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 2318 (Admin), [2003] JPL 600 at para 32 per Sullivan J.

5 In *Islington London Borough Council v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2691 (Admin) renovation works had been so extensive that the unlawful use of the premises would not have been apparent and so enforcement was not possible in that period and the time period was broken.

There is the potential for interruption in the use if the activity ceases because it is prohibited by the lockdown, or becomes practically or financially impossible and its resumption may be frustrated by the business's circumstances.The only real comparison in recent times has been the closure of large areas of the countryside because of foot and mouth disease in 2001. In *Miles v National Assembly for Wales*[6] this had caused motorcycling activities on a farm to cease on for between 12 and 18 months. In the ensuing enforcement notice appeal the Inspector found that this was a sufficient interruption to stop the accrual of immunity from enforcement action. Following *Thurrock*, Lloyd Jones J held:

> *"During the period of the foot and mouth outbreak there could have been no question of enforcement action. Accordingly this period cannot count towards the stipulated period for the accrual of immunity."*

Whilst in that case the landowner had intended to resume the motorbike use, it was:

> "immaterial for present purposes that the interruption in the use was not the result of a freely made choice on the part of the Claimant. In the present context what matters is that the objectionable use actually ceased and there was no longer any need or opportunity for the local planning authority to take enforcement action."

Whilst a matter of fact and degree, the Inspector was entitled to consider that the interruption in the *Miles* case did start the 10 year period again.

**Breach of condition**

Time runs on a breach of condition as long as it is the same breach of condition. Often it is said that a breach has to have continued or been continuous for the period, but neither term is in the statute. Legislation simply refers to a period beginning with the date of the breach. Whether a breach has continued or been continuous may be a helpful way of applying the test in most cases, but it is not the test itself. Some breaches continue at every moment after the period for compliance (for example, a condition requiring noise attenuation to be installed prior to the occupation of a building would be breached from the time that occupation began until the installation of the measures). Other breaches have been considered to have taken place even if they have not been carried on at every moment. For example, breach of a condition restricting the occupation of holiday bungalows to a period between March and November each year was lawful because it had been carried on for more than 10 years. A fresh breach did not start each November and end in March of the following year.[7] Similarly a condition prohibiting the operation of a factory on Sundays or a restaurant being open beyond midnight could be breached for more than 10 years even though the breach would only be carried on at particular times or days. Sullivan J observed in *North Devon*:[8]

> *"I would accept that questions of fact and degree will inevitably arise, for example, where the factory in this example has not been used on each and every Sunday, but on a few, some, or most, Sundays during each year. Such questions of fact and degree do not arise in the present case, and they will have to be resolved on a case by case basis."*

The question may then arise whether a breach of condition has been ended by the lockdown or its economic consequences and so a future contravention would be a new breach of condition, for which time must start running again. That will be affected by the nature of the condition, the nature of the breach and the duration of the interruption.

6 [2007] EWHC 10 (Admin), [2007] JPL 1235.

7 *North Devon District Council v First Secretary of State* [2004] EWHC 578 (Admin), [2004] JPL 1396.

8 See ***North Devon*** at paras 24, 25 per Sullivan J.

**Already lawful uses**

Where a use has been lawful by passage of time before a coronavirus inspired shutdown, then it will almost certainly be retained: in the absence of a material change of use occurring, lawful uses will only very rarely be abandoned.[9]

*Richard Harwood QC is the author of Planning Enforcement, the third edition of which is being published by Bloomsbury Professional on 23rd April 2020.*

## GUIDANCE ON WASTE

### Stephen Tromans QC

In the last issue of the newsletter I suggested that one of the problematic domestic areas would be waste collection and management, and consequent waste crime. This indeed now appears to be the case.[10] The Government has recently published non-statutory guidance on prioritising waste collection services during the pandemic. The clear emphasis is on maintaining collections of residual waste and food waste (black bag waste) and to protect public health and local amenity.

Advice is also provided on disposal of items which may be contaminated by coronavirus. Personal waste (such as used tissues) and disposable cleaning cloths can be stored securely within disposable rubbish bags. These bags should be placed into another bag, tied securely and kept separate from other waste. This should be put aside for at least 72 hours before being put in your usual external household waste bin. Householders should be given clear advice to put tissues and similar waste into their residual bin and not into recycling bins. It is acknowledged that choices may have to be made by local councils to suspend separate collections of dry recyclables and food waste. Food waste collection is regarded as a high priority because of the potential health risks. The guidance says that where food waste is collected weekly these services should be maintained so far as possible so that putrescible waste is removed frequently. For mixed food and garden waste collections, these would need to continue as for food waste to prevent food and garden waste build up. However, as a last resort it may be necessary to stop food waste collections temporarily and ask residents to put food waste in the same container as their residual waste and not to collect garden waste. Weekly collections of dry recyclables and collections of garden waste are regarded as low priority.

The provision of household waste recycling centres (HWRCs) is regarded as a medium priority. The difficulties of enforcing social distancing at sites is acknowledged, but also that some householders do not have the capacity to store waste at home indefinitely and that a trip to the HWRC could in some circumstances be essential. The guidance states:

> *"Some journeys to HWRCS may be necessary to avoid rubbish building up and a public health risk. Where possible key sites should be maintained and if necessary, access controlled. Where practical a limited and controlled access service may be feasible to reduce risk of fly tipping and to provide essential access for those not able to store waste indefinitely."*

The guidance acknowledges that the reduced levels of waste services may lead to greater fly tipping. Dealing with this is seen as high priority, and local authorities are advised to focus available resources on known hotspots and to prioritise collection of fly-tipped putrescible waste.

The guidance has been issued on a temporary basis and will be reviewed. Local authorities are of course under statutory duties as regards collection

9 See *Castell-Y-Mynach v Secretary of State for Wales* [1985] JPL 40.

10 https://www.gov.uk/government/publications/coronavirus-covid-19-advice-to-local-authorities-on-prioritising-waste-collections/guidance-on-prioritising-waste-collection-services-during-coronavirus-covid-19-pandemic

of waste, including recyclables, and the provision of HWRCs. Those duties have not been abrogated, and local authorities will need to be flexible in changing their arrangements to accommodate changed priorities within that statutory framework.

Of course, one factor which the guidance does not allude to is the impact on contractual arrangements made by waste collection and waste disposal authorities. The marked reduction in recyclate material (and presumably the huge backlog to be dealt with in due course) will have significant implications for these contracts.

## THE LANDLORD AND TENANT ACT 1954, COMMERCIAL LEASES AND CORONAVIRUS

David Sawtell

This article considers the effect of Coronavirus on commercial tenancies protected by Part II of the Landlord and Tenant Act 1954. Part II of the 1954 Act grants considerable protection from eviction and rights of renewal to business tenants where they have not contracted out of its provisions or have not ceased to be protected by it. The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, section 82 of the Coronavirus Act 2020 and government guidance on social distancing have a number of implications for both landlords and tenants of business leases that are protected by Part II of the 1954 Act.

**Continuity of the business**

Under section 23(1) of the Landlord and Tenant Act 1954, Part II of the Act applies to a tenancy where the premises "are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes." As a result of the current Covid-19 restrictions on trade and business, a number of retail and commercial premises are now closed up. This raises a number of considerations for both landlords and tenants.

The courts are likely to look at the tenant's predicament with leniency. Even a small amount of business use will suffice to show that the business has not ceased: *Pulleng v Curran* (1980) 44 P&CR 58: in that case, storage of equipment for use at the next door premises was enough. The question is whether the 'thread of continuity' of occupation has been definitely broken: *Teasdale v Walker* [1958] 1 WLR 1076, a case which concerned seasonal occupation. In *Flairline Properties Ltd v Hassan* [1999] 1 EGLR 138, the tenant of restaurant premises had to stop using them following a serious fire for some time. It was held that where a tenant ceases to occupy premises due to events over which he or she has no control, it is sufficient if he or she establishes that, at all times since the event that caused him or her to absent themselves, he or she has intended to return to reoccupy the premises once they can be occupied again.

This is not always to the tenant's advantage. If the contractual term is coming to an end, the tenant may not wish to be bound into a periodic tenancy. If the tenant vacates the property before the contractual term date, Part II of the 1954 Act will cease to apply, and the tenancy will come to an end: section 27(1A) of the Landlord and Tenant Act 1954. A tenant would be well advised to either serve a notice under section 27(1) not later than three months before the contractual term ends or, if he or she has insufficient time to do so, to make it absolutely clear that they are moving out and to ensure that they have ceased occupation for the purpose of the Act.

**Landlord's opposition to the grant of a new tenancy**

Section 82(11) of the Coronavirus Act 2020 has modified the application of section 30(1)(b) of the 1954 Act (landlord opposing the grant of a new tenancy on the ground that "the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due"). Section 82(11) reads:

> *"For the purposes of determining whether the ground mentioned in section 30(1)(b) of*

*the Landlord and Tenant Act 1954 (persistent delay in paying rent which has become due) is established in relation to a relevant business tenancy, any failure to pay rent under that tenancy during the relevant period (whether rent due before or in that period) is to be disregarded."*

The 'relevant period' is defined by section 82(12) as the period beginning with the day on which the Act was passed (that is, 25 March 2020: see also section 87(1)) and *"ending with 30 June 2020 or such later date as may be specified by the relevant national authority in regulations made by statutory instrument".* 25 March was Lady Day, and in England is a typical quarter day for rent. It should be noted, however, that if rent fell due on 1 January, and is only paid on 30 June (currently the last day of the disregard) it will be regarded as only being 83 days late, not 181 days late. This will have a significant impact on establishing ground (b) cases in 2020. Given the government's decision not to suspend the operation of Commercial Rent Arrears Recovery (CRAR) under the Tribunals Courts and Enforcement Act 2007, a landlord may instead wish to consider the possibility of using this as a remedy.

There will be implications for other grounds of opposition under section 30(1). For example, a landlord relying on section 30(1)(f) will need to consider whether they will be able to evidence an ability to carry out the development within a reasonable period of time of the termination of the tenancy: *Method Developments Ltd v Jones* [1971] 1 WLR 168. A landlord might well have to show that they have considered the possibility that works will have to begin while the current social distancing and other restrictions are in place.

**Fixing the rent of a new lease**

Those parties negotiating the rent of a new as part of a lease renewal under the Landlord and Tenant Act 1954 face considerable uncertainty about the state of the letting market. Section 34(1) requires the court to determine the rent for which "the holding might reasonably be expected to be let in the open market by a willing lessor". The valuation date is technically the date of commencement of the new tenancy: *English Exporters (London) v Eldonwall Ltd* [1973] Ch 415. For the moment, it might well be difficult to establish what the 'open market' will be like. This might affect some sectors more than others: A1 (shops and retail outlets) and A3 (food and drink) might well be more unpredictable than B2 (general industrial use) or B8 (storage or distribution), and valuers might well also have regard to use within the same use class, or other uses that might fall within permitted development.

**(Not) contracting out of the Landlord and Tenant Act 1954**

In the current economic climate, finding a tenant who will pay rent reliably might be even difficult than it was at the end of 2019. When the current restrictions on trading are lifted, landlords may find that potential tenants have a stronger negotiating position. At the same time, landlords may want to exchange flexibility in their lettings for rent coming in. Tenants may, therefore, be in a stronger position to refuse to contract out of the Landlord and Tenant Act 1954, while landlords may think that a protected tenant is better than none at all.

Landlords should consider their position very carefully. Unless they can establish one of the grounds set out in section 30(1) of the 1954 Act, it can be extremely difficult to evict a tenant who is paying their rent and abiding by their leasehold covenants. Even a tenant who is in default might be viewed sympathetically when a court considers an application for a grant of a new tenancy if they promise to mend their ways. Granting a tenancy protected by the 1954 Act is therefore a medium- or long-term decision.

**Conclusion**

The current Covid-19 restrictions on businesses and the changes made by section 82 of the Coronavirus Act 2020 are likely to have both a short term and a medium-term impact on the commercial property market. Demand for leased commercial premises, and the rent that landlords

can demand for them, might well soften. The balance between the landlord and tenant in a tenancy protected by Part II of the Landlord and Tenant Act 1954 might well shift towards in favour of the tenant, unless the landlord is able to rely on any remedies falling outside the Act such as CRAR.

## HEATHROW THIRD RUNWAY IN THE COURT OF APPEAL – NOT ALL ABOUT CLIMATE CHANGE

**James Burton**

Look back what feels like half a lifetime to 27 February 2020 BC (Before Covid), and the news splash for the climate emergency was not the global economy grinding to a social-distancing halt, but the judgment of the Court of Appeal in *R. (Plan B Earth & ors) v Secretary of State for Transport* [2020] EWCA Civ 214, concerning the Airports National Policy Statement ("the ANPS"). The ANPS, of course, designated a new third runway at Heathrow Airport in order to meet identified need for additional airport capacity in the south-east, whilst maintaining the UK's "hub" status. The Court of Appeal's declaration that the June 2018 publication of the ANPS was unlawful made news well beyond these shores, and was rightly seen as a significant victory for climate campaigners.

However, the claimants/appellants succeeded in the Court of Appeal on what were, ultimately, narrow points of statutory interpretation/a failure to take into account a material consideration. So classic administrative law grounds. Moreover, that errors had been made in the decision-making process was because of what the Court made clear was flawed legal advice. As is often the case, this was largely lost in the media storm the judgment created.

**The (real) reason the claimants/appellants succeeded**

In short, the Secretary of State for Transport had received advice, in terms, that he was not to take into account the UK's commitments under the 2015 Paris Agreement when preparing and designating the ANPS pursuant to s.5 of the Planning Act 2008, and he had followed that advice [Judgment§186].

The UK's 2016 ratification of the Paris Agreement necessarily meant that it endorsed a more demanding global temperature-increase "limit" than the 2°C global temperature-increase limit in place in 2008, which had informed the "carbon target" in section 1 of the Climate Change Act 2008 (for the UK to reduce its greenhouse gas emissions by 80% from their level in 1990 by 2050). The Paris Agreement, by contrast, enshrines a firm commitment to restricting the increase in the global average temperature to "well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels" (article 2(1)(a)). Crucially, the Secretary of State's decision not to take the UK's Paris Agreement commitments into account was made despite the fact that successive Ministers of State had informed Parliament that the UK was determined to deliver on the Paris Agreement [Judgment§§211-216].

The Court expressed its trenchant view that the advice given to and followed by the Secretary of State was incorrect [Judgment§§227,233], and that as a result the designation of the ANPS was unlawful. That successive Ministers of State had assured Parliament of the UK's commitment to the Paris Agreement meant there could be no doubt that the commitment was "policy" for the purposes of section 5(8) of the Planning Act 2008, and ought to have been taken into account before designating the ANPS [Judgment§222]. For essentially the same reasons, the Secretary of State should have considered whether to take the Paris Agreement into account under section 10 of the Planning Act 2008, but had not done so. Equally, the Secretary of State had failed to comply with Directive 2001/42 ("the SEA Directive") for this reason: the Paris Agreement commitments were clearly relevant to SEA, yet that material consideration had been deliberately excluded.

This, then, is why the claimant/appellants succeeded in the Court of Appeal, and achieved declaratory relief. On narrow points of statutory interpretation and a failure to take into account a material consideration, so meat and drink to judicial review, and all due to a position adopted by the Secretary of State that flowed from advice the Court found was flat wrong.

That does not mean that the victory for climate campaigners is simply pyrrhic. In the time since designation of the ANPS in June 2018 and judgment, the target set by section 1 of the Climate Change Act 2008 had moved from 80% to 100%. Whilst that Act does not require that international aviation emissions be taken into account in the carbon budgets set under it, the Government does takes them into account and there is no reason to think that policy will change. It has become markedly more difficult to justify an increase in flights since June 2018 as a result. Whether this has all been rendered academic by Covid-19 one can only wonder.

**Otherwise, a triumph for orthodoxy?**

Climate change aside, the judgment of the Court of Appeal also dealt with certain points of broad significance for environmental and planning lawyers, concerning both the SEA Directive and Directive 92/43 ("the Habitats Directive"). It is in those areas, where the claimants/appellants failed and the Court essentially adopted the judgment of the Divisional Court (Hickinbottom LJ and Holgate J) under appeal (*R (Spurrier & ors) v Secretary of State for Transport* [2019] EWHC 1070 (Admin) [2020] P.T.S.R. 240), that the case is likely to have continuing ramifications for years to come. These were points run by the broad coalition of five local authorities surrounding Heathrow airport, the Mayor of London and Greenpeace (referred to in the judgment as "the Hillingdon Claimants", Hillingdon LBC having been to the fore in the fight against a third runway at Heathrow for many years). Not the other appellants, Friends of the Earth, and the charity Plan B.

**Habitats Directive**

As regards the Habitats Directive, there were four separate issues, but at their heart was the Secretary of State's decision to exclude the option of a second runway at Gatwick Airport as an "alternative solution" for the purposes of Article 6(4) of the Habitats Directive. In common with the Divisional Court, the Court of Appeal found that the Secretary of State was plainly entitled to his view that Gatwick could not meet the "hub objective" he had set [Judgment§86], and that "hub objective" could not be faulted on public law grounds. The objective was not an illegitimate attempt to artificially narrow the field of "alternative solutions" late in the day, but had been present throughout and was genuine, hence there was nothing in the core complaint under the Habitats Directive [Judgment§§87-89, 93].

So far, so case specific. Along the way, though, the Court of Appeal rejected an argument of general application run by the Hillingdon Claimants: that the standard of review when considering breach of Articles 6(3) and 6(4) of the Habitats Directive should be more intense than *Wednesbury* irrationality, and should instead be a proportionality standard. That was rejected for two reasons (i) there was no "serious interference" with a "fundamental" EU right at issue, and, further (and perhaps more importantly) (ii) the standard of review was an area in which Member States had been left a discretion, and that standard in judicial review was *Wednesbury* [Judgment§75]. There was no contradiction between the *Wednesbury* standard on review and the fact a strict precautionary approach was required under Article 6(3) (appropriate assessment), nor was there any justification for a different standard of review in relation to Article 6(3) and Article 6(4) [Judgment§79]. The Court also held, unsurprisingly, that there is a distinction between the question of "alternative solutions" for the purposes of the Habitats Directive, and "reasonable alternatives" for the purposes of the SEA Directive. So there was no irrationality in the Secretary of State's decision to exclude the Gatwick second runway option as an

"alternative solution" under the Habitats Directive, whilst treating it as a "reasonable alternative" under the SEA Directive [Judgment§§107-119]. A request for a reference to the CJEU was rejected [Judgment§124].

**SEA Directive**

Again, there were four separate issues before the Court, though here the centre of attack was the adequacy of the "Appraisal of Sustainability" that stood as the "environmental report" for the purposes of the SEA Directive.

The most important point, in the writer's view, was the court's approach to considering the compliance of a "environmental report" with the SEA Directive, and the question of what was "reasonably required" of the environmental report pursuant to Article 5.

Here, and in common with the Divisional Court, the Court of Appeal adopted the test set by Sullivan J (as he then was) in *Blewett* in the context of the EIA Directive, as applying by analogy to the SEA Directive. As such, it would only be if the "environmental report" in question could not "reasonably", to the *Wednesbury* standard, be considered an "environmental report" by the decision-maker, that the court would intervene [Judgment§§126-144]. The Hillingdon Claimants' arguments, that the precautionary principle, and the language of Article 12 of the SEA Directive, meant that the bar was set above that, were rejected, as failing to respect the breadth of discretion afforded the decision-maker by the words "reasonably required" and apt to lead the Court of substitute its own view [Judgment§137]. Moreover, there was no warrant for a more taxing approach to assessing compliance with the SEA Directive to be taken than as set out in *Blewett* for the environmental statement required by the EIA Directive [Judgment§143].

The Court explained *Blewett* as no more than an application of normal *Wednesbury* review, and so-couched its seems uncontroversial. However, the judgment in *Blewett* was reached partly in reliance on the particular nature of the EIA regime: in which a would-be developer works up an environmental statement, which the determining authority then incorporates as *one part* of the wider environmental impact assessment the EIA Directive requires. It may be that the arguments before the Court of Appeal are not entirely reflected in the judgment, but the distinctions between the regime under the SEA Directive and that under the EIA Directive are not clearly to the fore. At least as a matter of practice, the EIA Directive ensures the decision-maker a complete opportunity to fill in the gaps left by an environmental statement, typically prepared by another, in order to complete the EIA; by contrast, the environmental report prepared under the SEA Directive is generally prepared by the decision-maker themselves, who it might be said is rather less likely to identify deficiencies in their own work. In short, the SEA decision-maker is likely to be judge and jury, as was the case for the ANPS, but their scrutiny of their own work will be subject only to light-touch *Wednesbury* review. The ringing endorsement of the *Blewett* approach as applicable to the environmental report required by the SEA Directive will surely be one of the more enduring legal legacies of the judgment.

Case-specific arguments, that the "environmental report" failed to adequately outline its relationship with other plans and programmes, or sufficiently identify the environmental characteristics of areas likely to be significantly affected, also failed.

*James Burton was one of the many counsel who had a hand in the case over its course: in his case drafting the SEA grounds for the Hillingdon Claimants.*

## CONTRIBUTORS

### Richard Harwood OBE QC

richard.harwood@39essex.com

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.

### Stephen Tromans QC

stephen.tromans@39essex.com

Stephen is recognised as a leading practitioner in environmental, energy and planning law. His clients include major utilities and industrial companies in the UK and elsewhere, banks, insurers, Government departments and agencies, local authorities, NGOs and individuals. He has been involved in some of the leading cases in matters such as environmental impact assessment, habitats, nuisance, and waste, in key projects such as proposals for new nuclear powerstations, and in high-profile incidents such as the Buncefield explosion and the Trafigura case. To view full CV click here.

### James Burton

james.burton@39essex.com

James specialises in environmental, planning, and related areas, including compulsory purchase and claims under Part 1 of the Land Compensation Act 1973. He acts for both developers and local authorities, as well as national agencies such as Natural England and the Marine Management Organisation. Recent notable cases/inquiries include *Grafton Group UK plc v Secretary of State for Transport* [2016] EWCA 561; [2016] CP Rep 37 (the successful quashing of a CPO promoted by the Port of London Authority after a five week inquiry), *Mann & ors v Transport for London* [2016] UKUT 0126 (LC)R (a successful group action under Part 1 of the Land Compensation Act 1973 and the 1-3 Corbridge Crescent/1-4). James successfully appeared on behalf of the London Borough of Tower Hamlets in the two week tall Building Proposal at the Oval inquiry. James has also appeared frequently in Committee (both Commons and Lords) in relation to HS2. James was named Environmental and Planning Junior of the Year at the Chambers Bar Awards 2015. To view full CV click here.

### David Sawtell

david.sawtell@39essex.com

David specialises in substantial real property, construction and development disputes, as well as insolvency, commercial and company law work related to the same. His work frequently has an international edge, involving cross border and overseas transactions and disputes, and has a growing appellate practice. He appears regularly in the Chancery Division, Upper Tribunal, and the First Tier Tribunal (Property Chamber) in respect of both residential leases and land registration, and has considerable experience of commercial leasehold disputes. He is instructed as leading junior counsel by a core participant in the Grenfell Tower inquiry. To view full CV click here.

### Jonathan Darby

jon.darby@39essex.com

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.

Chief Executive and Director of Clerking: Lindsay Scott
Senior Clerks: Alastair Davidson and Michael Kaplan
Deputy Senior Clerk: Andrew Poyser

clerks@39essex.com • DX: London/Chancery Lane 298 • 39essex.com

**LONDON**
81 Chancery Lane,
London WC2A 1DD
Tel: +44 (0)20 7832 1111
Fax: +44 (0)20 7353 3978

**MANCHESTER**
82 King Street,
Manchester M2 4WQ
Tel: +44 (0)16 1870 0333
Fax: +44 (0)20 7353 3978

**SINGAPORE**
28 Maxwell Road #04-03 & #04-04
Maxwell Chambers Suites
Singapore 069120
Tel: +65 6320 9272

**KUALA LUMPUR**
#02-9, Bangunan Sulaiman,
Jalan Sultan Hishamuddin
50000 Kuala Lumpur, Malaysia
Tel: +(60)32 271 1085