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Annual Climate Seminar 2026
12pm – 3.45pm • Tuesday 17 November

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Nigel Pleming KC
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Opening Remarks

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Daniel Kozelko
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Developments in Renewable Energy DCO's

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OUR DISCUSSION TODAY



- Intro to DCOs.
- The critical national priority for low carbon infrastructure.
- Developments in Solar farm NSIPs.
- Challenging NSIPs.
- Recent cases.
- Ones to watch.

INTRO TO DCOS

- Planning Act 2008.
- Secretary of State is the decision-maker, upon recommendation from PINS Examining Authority.
- 13 National Policy Statements.
- Significant reforms since 2023:
  - Updated energy NPSs.
  - Planning and Infrastructure Act 2025.
- Infrastructure may also be authorised by a hybrid bill, e.g. HS2, Channel Tunnel, Crossrail (the Elizabeth line).



NATIONAL POLICY STATEMENTS

Critical National Priority

- Where residual non-HRA impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.
- The SoS will consider the particular circumstances of any application, but will take as a starting point for decision making that such infrastructure is to be treated as if it has met any test requiring a clear outweighing of harm, exceptionality, or very special circumstances within EN-1, this NPS or any other planning policy.

NPS EN-1: Critical national priority for low carbon infrastructure.

- Need is established at the outset.
- Applicant must still comply with mitigation hierarchy.
- In all but "*exceptional circumstances*" residual impacts will rarely justify refusal of the scheme tests.
- Starting point is that application will meet with respect to nationally designated sites, and that adverse effects are "*clearly outweighed*".

SOLAR FARMS

NSIP Process (PA 2008)

- **100MW threshold** (previously 50MW).
- Secretary of State is the decision-maker, upon recommendation from PINS Examining Authority.
- 6 months examination, 3 months to recommendation, 3 months to decision.
- National Policy Statements.
- "One Stop Shop" – DCO includes compulsory acquisition, building of associated development.
- Costs much higher, typically millions in fees.

Local Planning Process (TCPA 1990)

- **Below 100MW threshold**
- Local authority decision-maker (although SoS may call in).
- 13 week timetable, or 16 week if EIA (although routinely extended).
- NPPF & development plan (s. 38(6), PCPA 2004).
- Planning permission only.

NSIP TRACK RECORD

Project	Date	Granted	Project	Date	Granted
Botley West (840 MW)	10 November 2026	N	**Stonestreet Green** (99.9MW)	23 October 2025	Y
Great North Road (800 MW)	27 October 2026	Y	**Tillbridge** (500 MW)	14 October 2025	Y
Frodsham (134 MW)	27 October 2026	Y	**Byers Gill** (180 MW)	23 July 2025	Y
Steeple (450 MW)	9 October 2026	Y	**Oaklands Farm** (138 MW)	19 June 2025	Y
Green Hill (500 MW)	8 October 2026	Y	**East Yorkshire** (400 MW)	9 May 2025	Y
Beacon Fen (400 MW)	21 August 2026	Y	**West Burton** (480 MW)	24 January 2025	Y
One Earth (740 MW)	8 July 2026	Y	**Heckington Fen** (500 MW)	24 January 2025	Y
Peartree Hill (320 MW)	2 July 2026	Y	**Cottam** (600 MW)	5 September 2024	Y
Dean Moor (150 MW)	2 July 2026	Y	**Gate Burton** (500 MW)	12 July 2024	Y
Springwell (800 MW)	8 April 2026	Y	**Mallard Pass** (350 MW)	12 July 2024	Y
Fenwick (237.5 MW)	18 February 2026	Y	**Sunnica** (500 MW)	12 July 2024	Y
Helios (190 MW)	3 December 2025	Y	**Longfield** (500 MW)	26 June 2023	Y

BOTLEY WEST

Para 3.8 of Decision Letter:

“The key issues contributing to the Secretary of State's overall conclusions on the planning balance can be summarised as follows. There would be substantial harm to the Green Belt and harm to a number of designated heritage assets (“HA(s)"), including assets of the highest significance (the Blenheim Palace World Heritage Site (“WHS")). In addition, there are significant adverse effects in relation to landscape and visual amenity. Further, there would be residual adverse impacts on aviation safety which present an unacceptable risk to public safety, and there are issues with the Applicant's approach to assessing and restoring Best and Most Versatile (“BMV") land."

NSIP CHALLENGES

- Appeals restricted in "*totally without merit cases*".
- All NSIP JRs listed as "*Significant Planning Court Claims*".
- No papers permission stage; potential for more CMCs and rolled-up hearings?
- Accelerated timetable:
  - Still 6 weeks Claim Form, 3 weeks Acknowledgement of Service, 1 week Reply. But now only 3 days to serve, not 7 days.
  - Target timescale for oral permission hearing of 3 weeks from deadline for Reply.
  - DGR and evidence must be filed and served within 28 days of service of order, not 35 days.
  - Target timescale for final hearing of 10 weeks from the DGR deadline.
  - Appellant's notice within 7 days of decision, notice and skeleton filed and served within 7 days of sealed order.
  - Target timescale for permission of 4 weeks from filing of appellant's notice.
  - Target timescale for final hearing of appeal of 4 months from filing of appellant's notice.

RECENT CASES

- Are there poor prospects of challenging DCOs moving forwards? *R (Aldington and Bonnington PC) v SSESNZ* [2026] EWHC 1252 (Admin)
  - JR of the DCO for the Stonestreet Green Solar project (165MW, export capacity 99.9MW).
  - Challenged on heritage grounds, all rejected by Lieven J.
  - Certified totally without merit as the heritage issues were "*a classic planning judgment*".

- Scope for a higher permission test? *R (Hynot Ltd) v SSESNZ* [2025] EWHC 2644 (Admin)
  - Grant of storage permit applications rather than DCOs.
  - Saini J saw "*substantial force*" in applying the *Mass Energy* test of "*reasonably good prospect of succeeding*".
  - This was due to (1) urgency (claim was "*Significant*"), (2) permission adjourned to a half day hearing, (3) written submissions from 3 parties; and, (4) claim substantially impacts third party.
  - Aligns with Recommendation 4 of Lord Banner in his NSIP review.

ONES TO WATCH

- Potential for challenges by Host Local Authorities? *R (Lincolnshire County Council) v SSESNZ* (AC-2026-BHM-000402)
  - Challenge to the Beacon Fen Energy Park DCO on essentially 2 grounds: (1) failure to take into account the new NPPF; and, (2) failure to identify residual concerns on waste grounds by the Council.
  - Both SSESNZ and Developer arguing that claim is totally without merit.
  - Developer pointing to comments of Reform leader in press as part of arguing the claim is TWM.
  - Permission hearing listed for half a day on 16 December 2026.
  - Follows the decision last Wednesday of Kimblin J refusing permission to apply for judicial review in another Lincolnshire County Council challenge to the Springwell Solar Farm

- The first challenge by an Applicant? Will there be an *R (Photovolt Development Partners Ltd) v SSESNZ* for the Botley West Solar Farm?

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Greenwashing and Consumer Protection

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STRUCTURE

- General update on greenwashing claims
- Overview in the UK
- Enforcement by the ASA
- TotalEnergies litigation: greenwashing and corporate framework

UPDATE ON GREENWASHING /CLIMATEWASHING CLAIMS

- “Climate-washing cases, which challenge inaccurate government or corporate narratives about the low-carbon transition, are the most common type of case involving corporate actors."

- LSE's Grantham Research Institute estimates (i) that more than 65% of these cases are resolved in claimants' favour and (ii) this type of case is the most common involving corporate actors

- A growing number of cases are made by the highest courts in their respective jurisdictions: 215 cases since 2015 have reached the highest court

- 2025: 31 new cases filed and 226 cases filed globally (q: whether they include the various OECD complaints to NCPs)

Source: Setzer J and Higham C (2026) Global Trends in Climate Change Litigation: 2026 Snapshot. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science

DOMESTIC FRAMEWORK (1)

- Digital Markets, Competition and Consumers Act 2024
  - Unfair commercial practices are those that are likely to cause the "average consumer" to take a "transactional decision" they would not otherwise have taken; also includes commercial practices which have omitted material information from an invitation to purchase or are on a list of commercial practices which are considered unfair: s225.
  - On the former, misleading actions include practices that involve the provision of false or misleading info relating to a product/service or any other matter relating to a transactional decision; the overall presentation is likely to deceive the average consumer, even if it contains true information: s226. Misleading omissions include omitting material information, namely that which an average consumer needs to take an informed transactional decision: s227.
  - Certain unfair commercial practices give rise to criminal liability, as set out in s237, and include those relating to misleading actions and omissions.
  - CMA Guidance "Unfair commercial practices" (updated 18 November 2025), available here

DOMESTIC FRAMEWORK (2)

- UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing ("CAP Code")
  - Voluntary and self-regulatory; concerned specifically with misleading marketing communications
  - Fill gaps where the law does not reach, easier than formal legal liability
  - Communications – “legal, decent, honest and truthful": Rule 1.1
  - Rule 11.7: “Marketing communications must not mislead consumers about the environmental benefit that a product offers" eg absence of an environmentally damaging element if not usually found in competing products;
  - Enforcement by the ASA
- Competition and Markets Authority's ("CMA") "CMA guidance on environmental claims on goods and services" (the "Green Claims Code")

ASA APPROACH AND DECISIONS

- ASA and CAP's Climate Change and the Environment (CCE) project, info here
  - The basis of environmental claims must be clear; unqualified claims could mislead if they omit material information: Rule 11.1
  - The meaning of all terms used must be clear to consumers: Rule 11.2
  - Absolute claims must be supported by a high level of substantiation: Rule 11.3
  - Must base environmental claims on the full life cycle of the advertised product: Rule 11.4
  - Must not suggest that claims are universally accepted if a significant division of informed or scientific opinion exists: Rule 11.5

- "Misleading environmental claims and social responsibility in advertising" (30 July 2026): explains how the advertising rules work, available here

ASA APPROACH AND DECISIONS

- Recent decisions
  - "Who gives a crap", see here (11 Nov 2026) – claim for toilet rolls was of ,"carbon neutral shipping": no information within the ad, its video or caption, which explained the basis of the "Carbon neutral shipping" claim, including by outlining whether, and the degree to which, the claim depended on an active reduction of carbon emissions or if it was based on the use of offsetting credits
  - Grind Coffee roasters, see here (11 Nov 2026) – whether coffee delivered by "carbon positive delivery" made the basis of the claim clear; he claim depended on the use of offsetting credits and Grind had intended to have the same meaning as carbon neutral. However, neither of those points were clear in the ad, which we considered were necessary to explain how the carbon positive status was achieved, including by outlining whether, and the degree to which, the claim depended on an active reduction of carbon emissions or if it was based on the use of offsetting credits
  - B Sporting, see here (11 Nov 2026) – whether claim that over 12,000 products on the sportsshoes.com site from a wide range of brands "carbon neutral deliveries" was clear; We understood the claim depended on the use of offsetting credits. However, there was no information in the ad that made that clear, which we considered was necessary to explain how the carbon neutral status was achieved, including by outlining whether, and the degree to which, the claim depended on an active reduction of carbon emissions or if it was based on the use of offsetting credits

GREENPEACE FRANCE AND OTHERS V. TOTALENERGIES SE AND TOTALENERGIES ELECTRICITÉ ET GAZ FRANCE (2025) – STATEMENTS

- Statements made by TotalEnergies which the court would consider:
  - "carbon neutrality ambition by 2050" or "net zero 2050"
  - the group would be or would become "a major player in the transition"
  - Fossil gas (LNG) is cheap; "essential complement to renewable energies"; and various claims regarding biofuels

- Court considered the following statements were insufficiently precise and would not consider them
  - "those that would lead consumers to believe that the group has adopted a climate strategy placing it on a trajectory compatible with a global "1.5°" trajectory in accordance with the Paris Agreement and existing benchmarks",

REMEDIES SOUGHT

- Remedies sought by claimants:
  - compensation (for non-material damage suffered) and an injunction relating to the communication
  - Penalty of EUR 20,000 per day for delay
  - Refrain from dissemination to consumers claims relating to the enviro commitments “understood by the average consumer as a claim to contribute to the fight against climate change" and for comparison purposes information was provided on the expected evolution of TotalEnergies' scope 1, 2 and 3 global emissions, its production plans until 2030 and its plans to open new oil and gas fields with this message….

REMEDIES SOUGHT (2)

“Fossil fuels (oil, natural gas and coal), such as those sold by TotalEnergies, are the dominant cause of climate change.

“The Paris Agreement set a goal of limiting global warming to 1.5°C, which means net zero emissions by 2050. Beyond that, the effects of warming will worsen: rising sea levels, extreme weather events, biodiversity loss and species extinction, as well as food scarcity, deteriorating health and poverty for millions of people around the world.

“To limit global warming to 1.5°C, in line with the Paris Agreement, greenhouse gas emissions must be reduced by at least 45% by 2030, which necessarily implies the reduction of fossil fuel production as well as the end of any investment in new oil or gas reserves. " ;

EU LEGAL FRAMEWORK

- Unfair Commercial Practices Directive (2005/29/EC)
  - Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive at Section 4 (see here)
  - Uniform rules – unfair business to consumer commercial practices
  - Unfair commercial practice if (i) contrary to requirements of professional diligence and (ii) materially distorts or is likely to materially distort the economic behaviour of the average consumer

- Empowering Consumers for the Green Transition (2024/825) amending the Unfair Commercial Practices Directive (applicable from 27 September 2026
  - Claims about carbon neutrality etc where consumers given the impression that they are contributing to the emergence of a low-carbon economy – supported by clear, objective, publicly accessible and verifiable commitments and objectives and set out in a realistic implementation plan

COURT'S ANALYSIS OF STATEMENTS (1)

- Article L121-1 Consumer Code – prohibits unfair commercial practices – adopting the definition of such a practice from the Directive. Then defines circumstances where a commercial practice is misleading.

- Court determine (i) statements contain false information or information likely to mislead consumer and (ii) likely to substantially alter the economic behaviour of consumer

- Some of the statements – "a communication for informational purposes, with no direct connection with promotion, the sale or supply of a product to consumers"

- Certain statements from commercial website intended for consumers, e.g. "5 good reasons to choose us" followed by multiple references to climate change

COURT'S ANALYSIS OF STATEMENTS (2)

- "carbon neutrality ambition by 2050"; "net zero 2050"; "major player in the transition"

- Statements concern group's activity (taken as a whole) and concern a performance objective of the company

- Para 108 – "not a question of investigating **whether there is a contradiction between the group's stated ambitions of carbon neutrality and its activity from the point of view of the company,** but of **determining whether, from the consumer's point of view, the communications contain false or misleading environmental claims**, and if so, whether they may have had an influence on his business decision"

COURT'S ANALYSIS OF STATEMENTS (3)

- Carbon neutrality – "scientific concept" derived from the Paris Agreement and the IPCC reports; implies a balance between carbon emissions and absorption of carbon from the atmosphere with the aim of limiting the impact of climate change (paras 109-110) and the long-term temperature goal

- This formed the basis of TE's communications campaign; claims made "unambiguously echoes the scientific concept of carbon neutrality"

- International Energy Agency – achieving net zero requires (i) considerable decrease in the use of fossil fuels (ii) immediate halt of all investments in oil and gas

- Did not specify its own scenario (which could then be assessed) and continued investments in oil and gas – misleading environmental claim – **consumers led to believe that by buying its products or services they were participating in a low-carbon economy, by following the recommendations of the scientific community based upon the Paris Agreement**

NOTRE AFFAIRS À TOUS & OTHS V TOTALENERGIES SE – CORPORATE FRAMEWORK

- Lawsuit commenced in 2020; judgment in June 2026

- Breach of (French law) “duty of care for parent companies and contracting entities" (also described in English translations as “duty of vigilance") requires the establishment and effective implementation of due diligence plan designed to identify risks and prevent serious infringements of HR and impacts on the environment and measures to mitigate risks

- Risk mapping – climate change and scope 1 and 2 GHG emissions, but not scope 3 arising from use of goods and services

- Court determined that (i) GHG emissions resulting from TE's activities undisputedly contribute to global warming part of climate risk within the duty of care (ii) scope 3 emissions form part of the adverse impacts of TE's activities which need to be identified in their due diligence plan and therefore the measures do not take into account scope 3 emissions thus the plan is incomplete

OECD GUIDELINES AND COMPLAINTS TO THE UK NCP

- Guidelines recognise the role that MNEs play in achieving internationally agreed goals on climate change mitigation and adaptation

- Policy – Chapters II and VI specifically concerned with risk-based due diligence to identify, prevent and mitigate adverse environmental impacts over full life cycle and those adverse impacts should be mitigated; need for measurable objective, science-based targets and strategies

- Disclosure – Chapter III and VI - public “regular, timely, reliable, clear, complete, accurate and comparable information" and “adequate, measurable, verifiable…and timely information" on adverse environmental impacts, including estimated timelines and benchmarks, so that progress against targets and objectives can be assessed

- Complaint mechanism to the NCP

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Airport Litigation and Climate Change

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LUTON AND GATWICK LITIGATION DATES

- *R(oao Luton and District Association for the Control of Aircraft Noise) v Secretary of State for Transport* [2025] EWHC 3206 (Admin) and [2026] EWCA Civ 648
  - High Court judgment 8 December 2026
  - Court of Appeal judgment refusing EoT for appeal 21 May 2026

- *R(Barclay and CAGNE) v Secretary of State for Transport* [2026] EWHC 1556 (Admin) and [2026] EWCA Civ 1040
  - High Court Judgment 23 June 2026
  - Court of Appeal judgment on PTA 4 August 2026

KEY ISSUES

- Grounds relating to the Environmental Impact Assessment Regulations:
  - Assessment of GHG emissions from inbound flights (Luton and Gatwick)
  - Assessment of non-CO2 emissions (Luton and Gatwick)

- Grounds relating to the Climate Change Act 2008
  - Alleged unlawfulness of treating the CCA 2008 as a pollution control regime for the purposes of policy (Luton)

- Grounds relating to Jet Zero Strategy
  - Alleged failure to take into account material risks to the Jet Zero strategy and/or comply with *Tameside* duty and irrational decision to give full weight to JZS (Gatwick)

INBOUND FLIGHTS



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INBOUND FLIGHTS

- Following *Finch* in the Supreme Court, the ES for both Gatwick and Luton reported the GHG emissions from both outbound and inbound flights.
- UK carbon budgets under the CCA 2008 only account for outbound flights. This is consistent with established practice to ensure nations do not “double count" emissions.
- SoS concluded that inbound emissions not capable of meaningful assessment as there was no carbon budget or other standard to contextualise them.
- Luton and Gatwick High Court judgments confirm approach of Secretary of State.
- *Finch* supports the view that some impacts may be incapable of meaningful assessment.

NON-CO2 EFFECTS



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NON-CO2

- Aircraft give rise to non-CO2effects which contribute to global warming.
- SoS concluded at both Gatwick and Luton that it was appropriate for a qualitative approach to be taken to these effects. There was a lack of a scientific consensus with regards to how this might be carried out.
- The Claimants argued it was unlawful not to carry out a quantitative assessment of these emissions. To refuse to do so on the basis of a lack of scientific consensus was not precautionary.
- Courts confirmed that adequacy of ES is a matter for the decision-maker. This includes where the precautionary principle is in play.
- SoS approach was lawful.

CCA 2008 AS A POLLUTION CONTROL REGIME

- The Airports National Policy Statement (a material consideration), provides that:
  - 4.54 In deciding an application, the Secretary of State should focus on whether the development is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The Secretary of State should assess the potential impacts of processes, emissions or discharges to inform decision making, but **should work on the assumption that, in terms of the control and enforcement, the relevant pollution control regime will be properly applied and enforced**. Decisions under the Planning Act 2008 should complement but not duplicate those taken under the relevant pollution control regime.“

CCA 2008 AS A POLLUTION CONTROL REGIME

- In Luton the SoS agreed with the ExA that the CCA 2008 could be described as a pollution control regime. The delivery risk in relation to Jet Zero was noted but (per the ExA) “ultimately the CCA 2008 must be adhered to and that the Government would introduce additional policy to deliver its legislative duties, if required".
- Claimant argued CCA 2008 not a pollution control regime.
- Court disagreed. Decision makers are entitled to rely upon other legal regimes.
- CCA has teeth.
- Decision in *Bristol Airport* challenge was correct.

JET ZERO STRATEGY



Delivering net zero aviation by 2050

JET ZERO STRATEGY

- CAGNE (A Gatwick Claimant) argued it was unlawful for the SoS to rely upon the Jet Zero High Ambition Trajectory in considering significance of GHG emissions. ES figures were based upon JSZ.
- CAGNE argued recent data showed UK to be off-track and should have been taken into account, including evidence from a Policy Commission Return.
- GAL argued it was reasonable for GAL to rely upon the High Ambition Trajectory because it was government policy. JZS also includes a number of policy levers which can be pulled. It was not unlawful for SoS to rely upon her own policy, particularly against the context of the CCA 2008.
- CoA held that having regard to purpose and nature of policy commission return and policies in JZS it is not arguably irrational to rely upon JZS and not take policy commission return into account.

CONCLUDING THOUGHTS

- Litigation confirms that *Finch* does not require assessment of the significance impacts under the EIA regime even where decision maker concludes that a meaningful assessment is not possible.

- Decision makers entitled to rely upon the CCA 2008 and existence of binding duties on SSESNZ under that Act.

- Decision makers entitled to rely upon the Jet Zero Strategy, noting its built-in flexibility.

- All eyes on Heathrow.

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See you at 2.40pm.
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Flora Curtis
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Ella Grodzinski
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NPPF Policies on Climate Change

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INTRODUCTION

1. The new NPPF: Climate Change Policies

2. Impact of new NPPF policies on plan-making and decision-taking

THE NEW NPPF: CLIMATE CHANGE POLICIES

- New Chapter 5 of the NPPF entitled '*Meeting the challenge of climate change*'.
- The most significant change is structural.
- Chapter 5 includes three climate change policies (CC2 and CC3 are national decision-making policies):

1. **CC1:** Planning for climate change
2. **CC2:** Mitigation of climate change
3. **CC3:** Adaptation to climate change

POLICY CC1: PLANNING FOR CLIMATE CHANGE

- The requirement for development plans to "*take a proactive approach to mitigating climate change and supporting the transition to net zero*" remains.
- More specific guidance on how plans should achieve this, including:
  - Development patterns
  - Addressing climate risks of proposed allocations
  - Linking climate change and GI/nature based solutions



POLICY CC2: MITIGATION OF CLIMATE CHANGE



- Continued requirement for LPAs to take climate change mitigation into account.
- Greater degree of specificity as to how this can be achieved and signposting to other relevant parts of the NPPF.
- Emphasis on low-carbon energy.
- Weight to the benefits of improving energy efficiency of new buildings.

POLICY CC3: ADAPTATION TO CLIMATE CHANGE

- Focus on three key areas:
    1. Flood risk
    2. Overheating
    3. Wildfires
- Linkage to other chapters of the NPPF on e.g. flooding and overheating.
- New requirement to include proportionate measures to mitigate against wildfires.
- "*Substantial weight*" to the benefits of improving the climate resilience of existing buildings/public spaces.

IMPACT OF NEW CHAPTER 5 POLICIES

- Structural changes mean that climate change policies are front and centre within the NPPF.
- In substance, the new policies build on earlier NPPF climate change policies.
- Signposting to other chapters of the NPPF could have benefits/drawbacks.
- Appeal decisions applying Chapter 5 policies:
  - Tithebarn Appeal (Ref. 6007622): 'substantial weight' given to drawing energy from renewable/low carbon sources in accordance with CC2.
  - Fowlmere Appeal (Ref. 6011365): 'significant weight' to conflict with CC2.

CHAPTER 10. SECURING CLEAN ENERGY AND WATER

- Objective: "*to support the development and operation of energy and water infrastructure in ways which align with wider development, clean power and net zero objectives (including the delivery of clean power by 2030)."*

- Plan-making:
  - W1: Planning for energy and water
  - W2: Securing renewable and low carbon energy and electricity network infrastructure

- Decision-making:
  - W3: Renewable and low carbon energy development and electricity network infrastructure

DROUGHT

- CC1(1) Planning for Climate Change

+

- W1(1) Planning for energy and water

+

- W4 (2) + (2) Water infrastructure

- Proactivity not (just) reactivity



ELSEWHERE IN THE NPPF

- Chapter 11. Facilitating the sustainable use of minerals (M)

“The objective of the policies in this chapter is to ensure there is a sufficient supply of minerals, which are essential to provide the infrastructure, buildings, green energy and goods that the country needs; while restricting peat, coal and onshore oil and gas extraction for environmental reasons. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation."

- Chapter 13. Protecting Green Belt land (GB)

WARRINGTON SOLAR APPEAL

- Early example: a 27.15MW solar farm within the Green Belt was allowed on appeal on 26 October 2026 through very special circumstances



ELSEWHERE IN THE NPPF

- Chapter 14. Achieving well-designed places (DP)
- Chapter 15. Promoting sustainable transport (TR)
- Chapter 18. Managing flood risk and coastal change (F) + Annex F

Objective: *"to minimise risks to development arising from all sources of flooding and coastal change, taking into account the impacts of climate change, by steering development away from areas of risk, ensuring that development will be safe for its lifetime without increasing flood risk elsewhere, and incorporating sustainable drainage systems where appropriate."*

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Fiscal Measures and Climate Change

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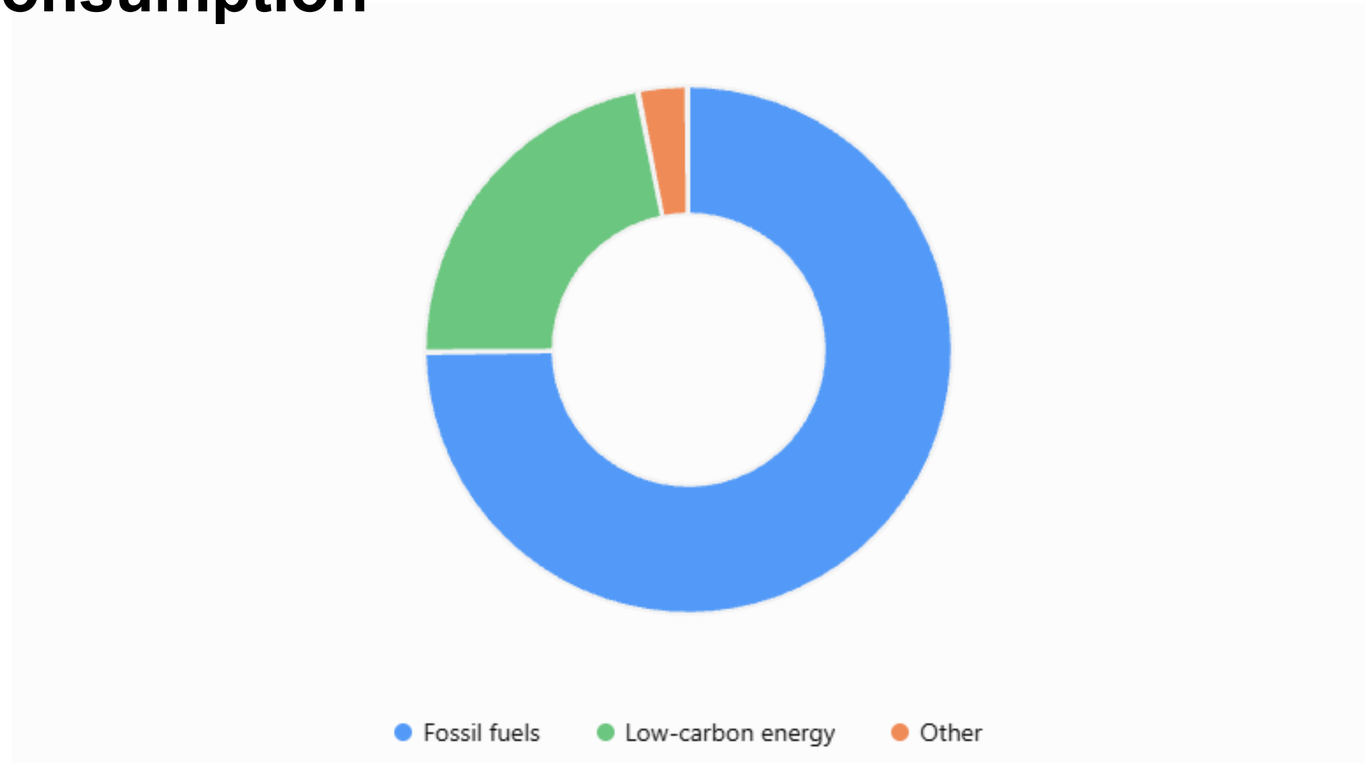
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Fossil Fuels Post-Finch

Annual Climate Seminar 2026

UK AND FOSSIL FUELS: WHERE ARE WE NOW?

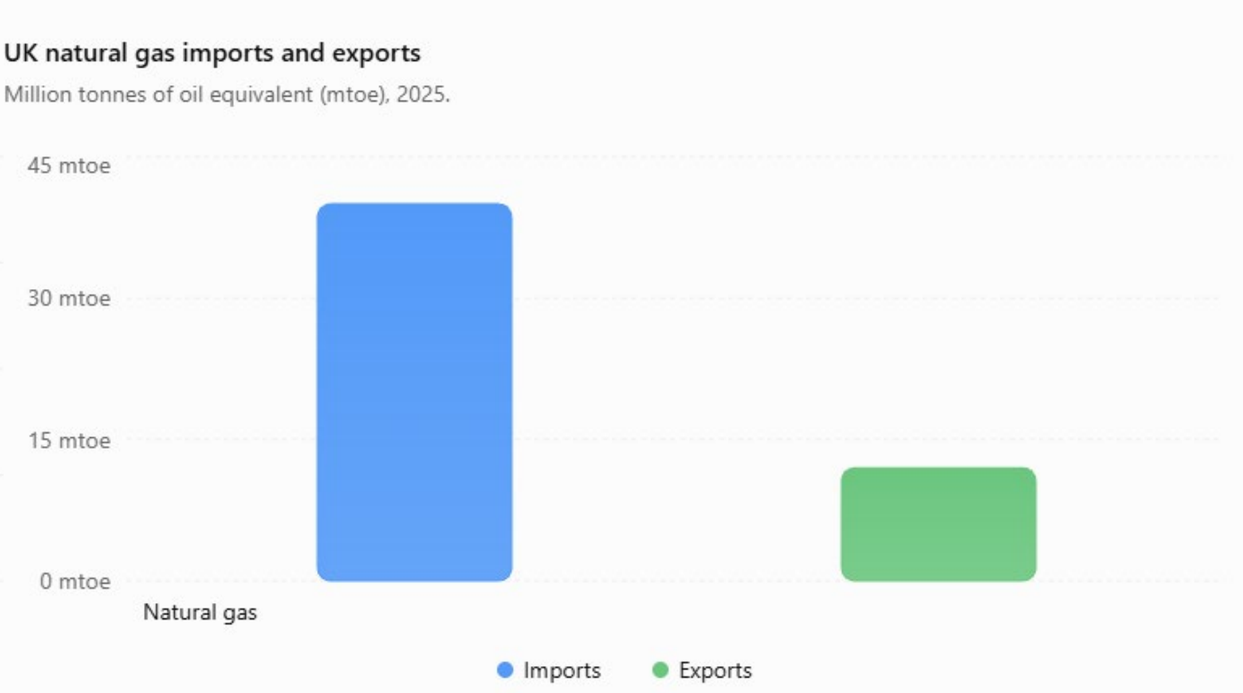
(1) Fossil fuels account for approximately 75% of the UK's overall energy consumption



UK AND FOSSIL FUELS: WHERE ARE WE NOW?

(2) The UK is a net importer of both oil and gas

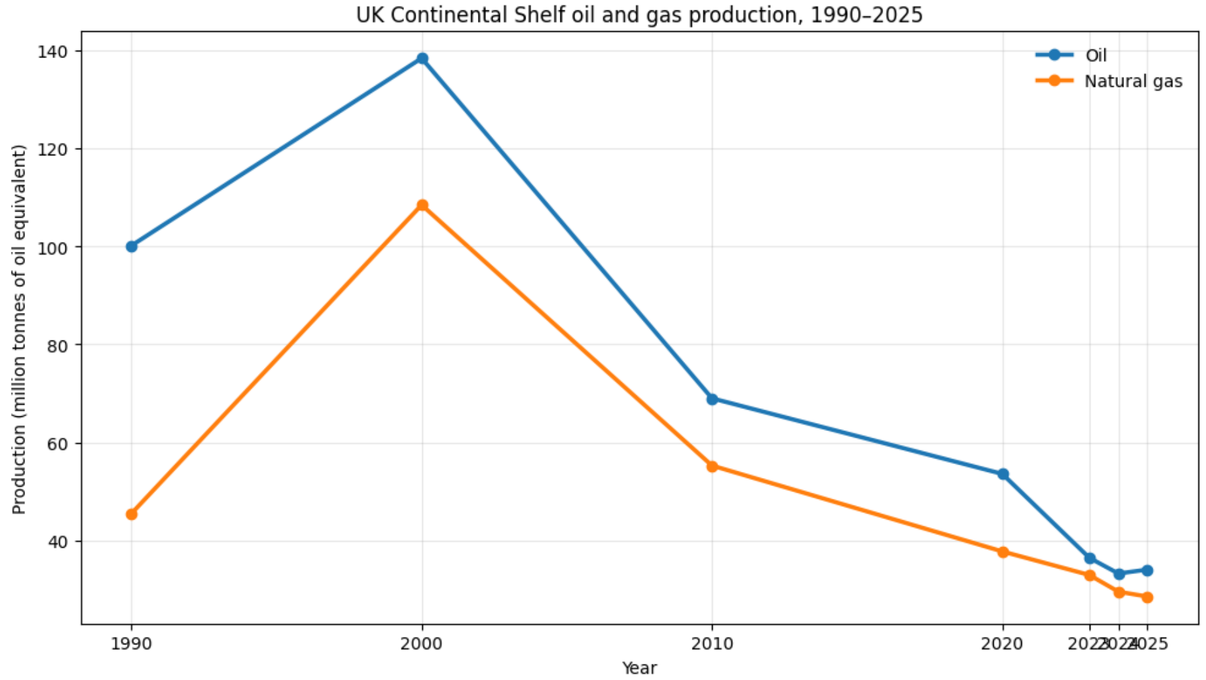




UK AND FOSSIL FUELS: WHERE ARE WE NOW?

(3) The UK exports most of its north sea oil but retains most of its domestically produced natural gas

(4) UK production in North Sea has been steadily declining since the turn of the 21st Century



FOSSIL FUELS AND CLIMATE CHANGE: WHERE DO WE NEED TO GO?

(1) Reduce consumption

- The Climate Change Committee has been clear that we need to ‘End the fossil fuel age for a secure and prosperous future'. By 2050, the CCC's balanced pathway to net zero that the UK needs to reduce oil consumption by 84% and gas consumption by 77%. So, significant reductions in consumption of fossil fuels.

(2) Domestic production

- The CCC has also advised that the North Sea should be subject to a managed transition awa from production. The CCC has observed that maintaining ongoing UK production makes little difference to UK energy security or to energy prices.
- In June 2025, a study published by the UCL Energy Institute concluded that opening any new North Sea oil and gas fields would be incompatible with achieving the Paris Climate Agreement goals of limiting warming to 1.5°C.

FINCH'S EMERGING LEGACY

- Changed what must be taken into account, not necessarily how significance is to be determined?

- The decision-maker still has a wide latitude as to the nature and extent of the assessment of significance.

- New effects likely to have less well established methodologies for quantification and benchmarking

- Examples of newly caught effects in aviation sector – non-CO2 emissions and international inbound flights

NEW OIL AND GAS LICENCES?

- No new offshore petroleum licences
- Consultation carried out in Spring 2025
- North Sea Future Plan published in November 2025
- However, concept of ‘Transitional Energy Certificates' introduced



ENERGY INDEPENDENCE BILL

PART 9

OIL AND GAS TRANSITION AND REGULATION

North Sea Transition Authority

152 Oil and Gas Authority renamed North Sea Transition Authority

Objectives

153 Objectives

Powers of NSTA

154 Decommissioning of wells
155 Determination by NSTA of disputes relating to offshore petroleum
156 Functions of the NSTA in relation to managers etc of licensees and holders of certificates
157 Amount of financial penalty for breach of petroleum-related requirement

Oil and gas licensing and transitional energy certificates

158 Oil and gas licensing and transitional energy certificates

Amendments consequential on this Part

159 Consequential amendments

- Introduced on 4 November 2026
- Remove the the North Sea Transition Authority's power to grant new oil and gas licences.
- Framework for 'Transitional Energy Certificates' for (a) adjacent or nearby acreage, or (b) part of an existing geographical field, where another part of that field is, or forms part of, an already permitted area.

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- The economic objective: maximising the economic value to the UK of offshore activities.
- The net zero objective: assisting the Secretary of State in meeting the Climate Change Act 2008 duties.
- The transition objective: considering the impact of the transition away from fossil fuel production on affected workers, communities and businesses.

EXISTING LICENCES?

- Rebuttable presumption that all hydrocarbons produced over the lifetime of the project will eventually be combusted.
- Substitution is irrelevant to whether Scope 3 emissions must be assessed.
- The environmental statement should therefore use a global baseline for Scope 3 emissions, rather than a geographically confined baseline.
- The assessment should consider the project's emissions against both global and national benchmarks.

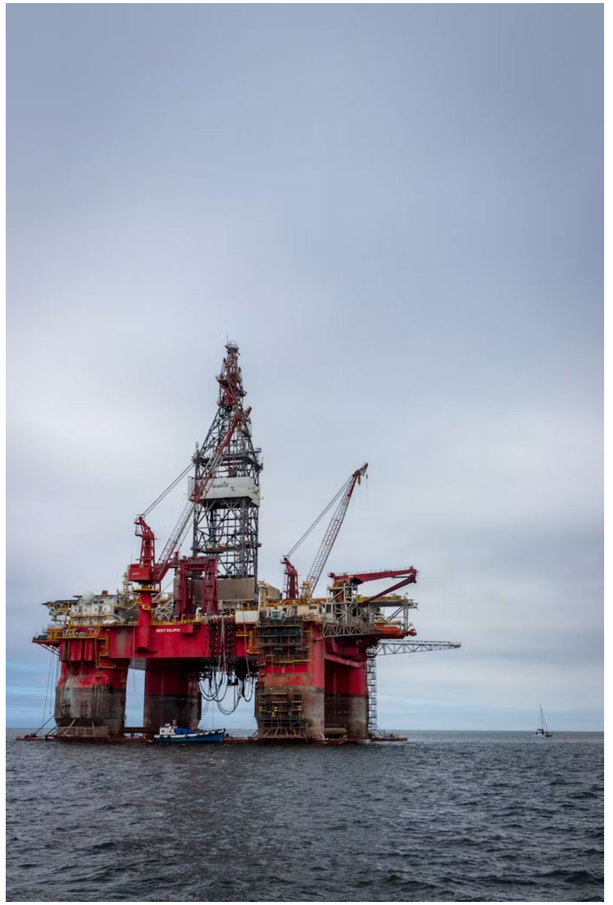
Department for Energy Security & Net Zero

Environmental Impact Assessment (EIA) – Assessing effects of downstream scope 3 emissions on climate

Supplementary guidance for assessing the effects of downstream scope 3 emissions on climate from offshore oil and gas projects

EXISTING LICENCES: JACKDAW AND ROSEBANK

- *Greenpeace Ltd v Advocate General for Scotland* [2025] CSOH 10: EIA failed to consider scope 3 emissions and consents quashed.
- Jackdaw granted development and production consent in October 2026: 'moderate adverse weight' attached to greenhouse gas emissions, but benefits outweighed climate change impact.
- Rosebank – TBA imminently…



UNINTENDED CONSEQUENCES, AND THE NEXT FOSSIL FUELS FRONTIER?

- Investor State Dispute Settlement clause, for example:
  - 'Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if the national or company concerned so wishes'

- Woodhouse Colliery claim against UK Government under 1976 UK-Singapore Bilateral Investment Treaty, following *post-Finch* quashing of planning permission: *R (Friends of the Earth Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2349 (Admin)

- Energy Charter Treaty claims against Ireland and EU

- Petroleum development and exploration licences model clauses under the Petroleum Act 1998 contain arbitration clauses: *Coastal Oil and Gas v Welsh Government*

THANK YOU

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Panel Discussion

Annual Climate Seminar 2026

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Climate Law Matters

Podcast

39 Essex Chambers' barristers investigate the key legal developments, across both public and private law, in addressing the most pressing challenge of our generation, climate change. Through this podcast, they interview leaders in their fields, and across a range of sectors, to understand (i) the key developments as they see them and (ii) the role for litigation and regulation in those developments, including any legal barriers.

The team includes Steph David, Flora Curtis, Celia Reynolds, Chris Moss and Ella Grodzinski which has expertise across the breadth of Chambers' specialisms.

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thank you

Join us for refreshments in CR6 next door.

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