



RTPI
Royal Town Planning Institute

2024 Planning Enforcement Conference

Planning Law Update

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Scott Stemp

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April 2024

***Watton v Cornwall Council* [2023] EWHC 2436 (Admin)**

- Approach to viability was wrong and misleading
- Condition did not do what the OR said was necessary
- Significant errors of interpretation on Policy 5 of the development plan
- Seriously misleading on travel distances and emissions benefits
- Did not address principal points raised by the objector

Watton v Cornwall Council [2023] EWHC 2436 (Admin)

- Key take aways:
 - Be balanced in writing an OR (including for enforcement)
 - When coming down on one side, acknowledge that there is a counter argument
 - Check that you have understood all policies correctly
 - Deal with all key points made by any expert reports for the owner/occupier

Royal Borough of Kingston Upon Thames v SSLUHC **[2023] EWHC 2055 (Admin)**

- NPPF §150(e) listed what is not inappropriate development: “(e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)”
- Court held that inspector was wrong to find that stationing a caravan was not inappropriate: NPPF §150(e) not a closed list but the examples given must be read in context and in conjunction with Government’s Planning Policy for Traveller Sites which states that traveller sites in the Green Belt are inappropriate development

Royal Borough of Kingston Upon Thames v SSLUHC [2023] EWHC 2055 (Admin)

- Key take aways:
 - Clarified that traveller sites are inappropriate development in the Green Belt
 - More generally a reminder that NPPF §155(e) (formerly §150(e)) is not a closed list, but that there should be commonality with the examples given there

R (Substation Action Save East Suffolk Ltd) v SSESNZ **[2024] EWCA Civ 12**

- Lewis LJ said that it was clear from the relevant policies that the application of the sequential test is concerned with risks of flooding from fluvial (i.e. from rivers) and not flooding from surface water
- Thus the relevant policies concerning the sequential tests did not require an applicant for development consent to carry out the sequential test

R (Substation Action Save East Suffolk Ltd) v SSESNZ **[2024] EWCA Civ 12**

- Key take away: when considering enforcement for a site at risk of flooding, be aware that surface water flooding is still a material consideration, but not one which requires a sequential test under the NPPF

Uses, operational development, and *Caldwell*

Murfitt, Somak Travel, Kestrel Hydro:

- Works have been secondary, ancillary or associated with the change of use, not fundamental to or causative of the change of use
- Physical works to facilitate and support the change of use

Uses, operational development, and *Caldwell*

Caldwell:

- There is a limitation on the power described in *Murfitt* where the operational development is itself the source of or fundamental to the change of use
- Whether that limitation is reached is a matter of fact and degree

The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024

s171B:

- **Operational development: 10 years from substantial completion**
- **COU dwellinghouse: 10 years from the date of the breach**

The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024

Transitional provisions (Reg 5):

- **Operational development: n/a if substantially complete before 25 Apr 2024**
- **COU dwellinghouse: n/a if breach occurred before 25 Apr 2024**

The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024

25 April 2024

Op dev : substantially complete before then?

YES = four year immunity

NO = ten year immunity

The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024

25 April 2024

COU dwellinghouse : breach began before then?

YES = four year immunity

NO = ten year immunity

Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

4. Additional matters to be specified in enforcement notice

An enforcement notice issued under section 172 of the Planning Act shall specify—

(a) the reasons why the local planning authority consider it expedient to issue the notice;

(b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and

(c) ...

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