

# Material Considerations – what on earth do they look like?

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# Overview

- **Perhaps most common area**
- **Material Consideration**
- **Material Planning Consideration**
- **What other considerations?**



# How to spot a material consideration: The Two Tests

- **Test 1: express or implied by statute**
- Creed NZ v Governor General [1981] 1. N.Z.L.R. at 182
- In statute where any discretion to have regard is set out expressly and/or impliedly identified considerations.



# How to spot a material consideration: The Two Tests

- **Test 2:** *patently obvious it is a material consideration*
- Re Findlay [1985] AC 318, House of Lords

*“in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers...would not be in accordance with the intention of the Act.”*





# Did it make a difference?

- **You have to show that the material consideration ignored has made a difference; so ask the question – so what?**

*“it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because “obviously material”) requires to be taken into account “as a matter of legal obligation”)*

*Derbyshire Dales DC v SSCLG [2010] per Carnwath LJ [at 28]*

## Other important cases

- R(DSD) v Parole Board [2018] EWHC 694 (Admin)
  - There is a distinction that which arises from the implication by statute; and the wholly separate role played by the courts, to identify *Wednesbury* terms ignoring of a material consideration.
- DLA Delivery v Baroness Cumberledge [2018] EWCA Civ 1305 – Secretary of State must have regard to his own recent decision on the interpretation of the same local plan policy.

## Other important cases II

- The principle of consistency
- **Hallam Land Management Limited v SSCLG [2018] EWCA Civ 1808** – the extent to which an unpublished Inspector’s Report is a material consideration.
- **Tate v Northumberland County Council [2018] EWCA Civ 519** – where an Officer’s report referring to a previous Inspector’s decision for similar proposal, on the same site, reached a different recommendation.

# What is a material planning consideration?

- Aberdeen City & Shire Strategic Development PA v Elsick Development Co Ltd [2017] UKSC 66 – *‘for a consideration to be material, it must have a planning purpose (i.e. it must relate to the character or the use of land)... it must fairly and reasonably relate to the permitted development.*

# Planning Considerations and CIL

- Working Tiles Films Limited v Westminster CC [2016] EWHC 1865 – The test for necessity in Regulation 122
  - Section 106 & planning purpose
  - Must be related to the permitted development
  - Not be *Wednesbury* unreasonable



# Are financial contributions a material consideration?

- R (oao) Wright v Forest of Dean DC & Resilient Energy Severndale Limited [2017] EWCA Civ 2102 –
- Argument over whether a turbine erected for ‘community benefit’, could receive a 4% turnover to a local community fund. This was on the basis that guidance encouraged community led renewable energy schemes.
- Held that it was manifestly immaterial planning consideration; *‘even planning policy cannot covert something immaterial into a material consideration for planning purposes.’*

# Are financial contributions a material consideration?

- Good Energy Generation Limited v (1) SSCLG and (2) Cornwall CC [2018] EWHC 1270 (Admin)
- 11 wind turbine; benefits (1) financial contributions to community fund; (2) community investment scheme open to local residents; and (3) reduced electricity tariff, open to local residents (20% off bills)
- Connection between the benefit and the development was too remote and uncertain, rather than real. [89]



# MAKE PLANNING GREAT AGAIN



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