

EIA + THE COURTS – 4 RECENT DECISIONS

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ENLIGHTENED THINKING

“the interpretation of the EIA Regulations; they "have a wide scope and a broad purpose". That is commonly cited and often misunderstood; it speaks against a legalistic approach and requires instead a purposive approach; it does not turn a word into meaning whatever can be extruded from it.”

Swire v Ashford BC, Queens Bench
Div, 24 March 2021

- New winery and visitor centre
- Which sched 2 category?
 - Council – “urban development project”
 - Objector - “packing and canning of animal and vegetable products” or “brewing and malting”



- “vegetable product” = all plant-based products, in contradistinction to minerals – could include wine
- Not “packing and canning”; bottling could have been mentioned, but was not
- “brewing and malting” is yet more precise – not as wide as “fermenting”

When to screen?

- Reg 3 – implied duty on planning authority ***at time of granting permission*** to be satisfied not EIA development
- -ve screening opinion not conclusive - contrast +ve screening opinion
- But - has to be change in circumstances – neither LVIA submitted with application, nor comments from AONB unit, nor revised proposals for roof
- No duty to keep –ve screening opinion under review
- Correct question at time of granting permission – “is this development likely to have significant environmental effects?”

R (on the application of Swire) v
Sec of State, Queens Bench
Div, 22 May 2020

- Quashed –ve screening decision
- Land contaminated – animal carcass rendering facility



Issue – whether any likely significant adverse effects can be overcome through imposition of conditions:

- Comprehensive remediation scheme required
- Very little evidence of safe and effective methods of detecting, managing and eliminating contamination
- Lack of sufficient information to assume measures would be successful

Pearce v Sec of State, Queens
Bench Div, 18 Feb 2021

- Quashed DCO – North Vanguard Offshore WF
- Cumulative L+VI - on shore substation – “important controversial issue”
- ES concluded significant impact



Issue – did the significant impact need to be addressed in the Vanguard decision?

- ExA – appropriate for cumulative impacts to be considered in any future examination into Boreas Offshore WF (began 5 months after Vanguard examination closed)
- Regs – decision-maker required to evaluate and weigh significant effects
- Reason given for deferral - limited amount of information available on Boreas – not justified - the information was in front of the Defendant, NVL considered it to be adequate and no one suggested the contrary.

Oil wells

- No requirement to assess greenhouse gases from use of oil after refining elsewhere
- “indirect effects” nevertheless had to be effects which the development itself had on the environment

R (on the applic of Finch) v Surrey CC Queens Bench
Div 21 Dec 2020



Court “applied brakes”:

- Interpretation of sch 2 categories
- “the project”/ indirect effects
- Rescreening – only if change of circumstances

But “fired warning shot”:

- Over-relying on conditions to avoid EIA
- Deferring consideration of significant impact



Lessons:

- Alleged legal flaws are not “slam dunks” for objectors
- Decision-makers – know/ understand/ apply the law (even when it’s unclear!)
- Developers – -ve screening might result in court challenge

