

Consultation from Inspector Elizabeth Ord on High Court Judgement outcome

I have reflected on the text I originally asked to be sent out for consultation and would like to change it to the following (highlighted in yellow):

On 6 March 2019 Mr Justice Dove handed down a judgement in the High Court in the case of *Claire Stephenson v SoS for Housing and Communities and Local Government CO/3511/2018*, relating to a challenge to paragraph 209(a) of the National Planning Policy Framework July 2018, which deals with on-shore oil and gas development. As the Claimant was partially successful, he gave the parties time to consider the judgement and what the consequential remedies should be before making a final order. On 14 May 2019 that final order was made.

In brief, the Claimant challenged the adoption of paragraph 209(a) of the National Planning Policy Framework of 24 July 2018 on four grounds. She succeeded on the following two grounds:

Ground 1- that the Secretary of State unlawfully failed to take into account material considerations, namely scientific and technical evidence, which had been produced following the adoption of the Written Ministerial Statement of 16 September 2015;

Ground 4- that the Secretary of State failed to carry out a lawful consultation exercise in relation to the revisions to the Framework which were published on 24 July 2018.

As a consequence the Order of 14 May 2019 declared the Secretary of State's decision of 24 July 2018 to adopt paragraph 209(a) of the revised Framework unlawful, and quashed it.

Of note is the element of the judgement which discusses the Written Ministerial Statement (WMS) of September 2015 and how the government transferred its provisions across to paragraph 209(a) without considering updated scientific evidence including evidence of ground level emissions and fugitive emissions. Although the public consultation on the draft revised Framework invited comment on the proposed oil and gas provision, scientific evidence submitted by consultees was not taken into account. The WMS of 17 May 2018 is also mentioned.

Although the North Yorkshire, City of York and North York Moors National Park Minerals and Waste Joint Plan is being examined against the March 2012 National Planning Policy Framework, as the September 2015 and May 2018 WMSs are material considerations for the examination, this judgement may impact on how I approach certain aspects of the Plan's hydrocarbon provisions.

I am interested in the weight I should give to the WMSs following the judgement. Does the judgement highlight uncertainties in the scientific evidence on emissions or anything else, which would justify a precautionary approach being reflected in Plan policies eg 500m buffer zone? If so, should there be a commitment to specifically review any relevant precautionary Plan provisions within 5 years of adoption, to allow experience of operations to be taken into account, setting out what that review would entail and building on the statutory obligation under regulation 10A of *The Town and Country Planning (Local Planning)(England)(Amendment) Regulations 2017*? Bearing in mind that relevant future planning applications will be assessed against Plan policies, the revised Framework and the MWSs, the implications of the judgement require careful consideration.

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Consequently, I am inviting comment on the judgement and order from the Mineral Planning Authorities and any interested parties who so wish to comment. For the avoidance of doubt, this consultation is not limited to matters I raise in the previous paragraph. Any legal opinion the parties wish to proffer would be welcomed. If any parties submit that I should consider scientific or other evidence as a consequence of this judgment, that evidence should be included with their representations and the relevant sections of the evidence clearly identified.

Consultation will run from **Wednesday 19<sup>th</sup> June 2019** to **Wednesday 10<sup>th</sup> July 2019**.

Please send any responses to the Programme Officer at [Carmel.Edwards@northyorks.gov.uk](mailto:Carmel.Edwards@northyorks.gov.uk)