Planning up-date: cases and policy

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Recent cases and changes in planning law

1. There has been considerable judicial activity in the planning field; much in judicial review and of course Government legislation in the same topic. Whether that is ill or well-judged is perhaps not for me to say but it is worth noting that judicial criticism has been unusually heavy.

2. I intend to touch briefly on one or two major policy changes as well.

Case law

3. Housing has formed a formidable part of judicial decisions reflecting the greater activity there has been in this area since 2012 and the fact that so many councils still do not have an up-to-date Framework ('FW') compliant Local Plan.

4. Remember, the FW approaches housing in the following way:

   "*Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable sites.* " [FW 49]. The consequences of this simple sentence are potentially catastrophic if you are the LPA (or an amenity group that believes what the Government says about localism) but, if you are a developer, it will be music to your ears if you can establish there is no 5 year HLS - and hence the greater number of housing applications and appeals now coming forward. To remind everyone:

- if there is no 5 year HLS, the HLS policies are not up-to-date and the presumption in favour of sustainable development in FW 14 kicks in.[1]
- In turn this means that permission must be granted unless the adverse impacts would 'significantly and demonstrably' outweigh the benefits; or
- specific polices in the FW indicate that development should be restricted. Examples are given in footnote 9 and include Green Belts, SSSIs, the Birds and Habitats Directives, AONBs and designated heritage assets (e.g., listed buildings).
- The phrase 'relevant policies for the supply of housing' obviously include those policies which provide for housing on strategic and other sites to meet existing DP or otherwise assessed 'targets'; what might be called 'the numbers' policies. But the phrase does not stop there:

    - What of a policy that draws the development boundary tightly round the existing urban area?
    - Or a policy that allows for expansion within the development boundary but arguably not sufficient expansion?
    - Or what of landscape policies (other than Green Belt) that seek to restrict development, e.g., 'green wedge' or similar policies?

4. *Cheshire East BC v. SSCLG* [2015] EWHC 410 Admin.
Application for 146 dwellings in the open countryside; contrary to policies in the LP protecting open countryside; would also cause a significant erosion of the Green Gap between two villages contrary to the LP policy on green gaps; there was not a demonstrable 5 year HLS; in the light of that finding, the Inspector further found that the weight of housing policies was reduced and this applied to the Green Gap policy too; paras. 49 and 14 of the FW therefore applied. The decision was challenged by the Council. Held:

    4.1 The finding that the development was sustainable was a proper finding. The Inspector did not have to approach the issue of sustainability 'sequentially' by finding that the development was sustainable before looking at the weight to be given to the DP and the HLS position. 'Sustainability' was a matter for planning judgment and it was logical for the Inspector to decide what weight he should give to the DP and determine the issue of HLS first, as these findings were relevant to the issue of sustainability [20-21].

[1] Subject to two important qualification which will be considered below.

4.2 But on the Green Gap policy the judge was clear that this was not a relevant policy for the supply of housing.[2] It was a policy designed to protect a specific area or feature[3] and was consistent with the FW's approach to the environment (conservation of the environment including landscape) [45, 51-54].

4.3 Finally, the judge declined to exercise her discretion not to quash the decision, holding that it was 'an exceptional course' so to refuse where an Inspector had made an error of law. She declined to find that the error would have made no difference to the outcome (but see below as to the new statutory test).

4.4 it is perhaps worth noting that, in another *Cheshire East* case,[4] Lewis J held that an Inspector was not obliged, at least in a s. 78 appeal, to identify precisely the amount of housing land available only whether the amount was less than needed (applying the relevant buffer) for the next 5 years [34].

5. In *South Northants Council v. SSCLG* [2014] EWHC 573 Admin, Ouseley J dealt, *inter alia*, with the objectively assessed housing needs of the area and the position of a revoked RSS in relation to those needs. The judge found that the evidence base for the RSS could be used; it was not wrong to do so provided that it was not used to enlarge the housing requirement beyond the full assessment of housing needs (e.g., by using an out-of-date growth strategy). He also dealt with the definition of a relevant policy for the supply of housing [see above at 4.2]. He also found, implicitly, that when deciding whether the 'buffer' should be 5% or 20% one looks back at the DP policies (whether LP, SP or RSS) that were then in force to see how supply fared against that requirement when in force [37].

6. In *Bloor Homes East Midlands Ltd. v. SSCLG* [[2014] EWHC 754 Admin, Lindblom J dealt with a number of matters. Of interest were his discussion of FW 14 and the meaning of 'absent', 'silent' and 'out of date'. It shows that these expressions should not be loosely bandied about and do have meanings which can be properly applied depending, of course, on their contexts [42-58]. He also observed, in dealing with

[2] These are not policies for the 'provision of housing' (see [2013] EWHC 3058 Admin) and Ouseley J's formulation in the *South Northants* case seems to be the one that should be followed; see *Hopkins Homes Ltd. v. SSCLG* [2015] EWHC 132 Admin.
[3] See Ouseley J's approach in *S. Northants Council v. SSCLG* [2014] EWHC 573 Admin at [46-47].
[4] *Cheshire East BC v. SSCLG* [2014] EWHC 3356 Admin.

the calculation of HLS, that this was not an exact science [104].[5] He made it clear that the use of the Liverpool or Sedgefield methods (dealing with the shortfall in supply and whether this should be spread over the plan period or the first 5 years) was a matter for the planning judgment of the Inspector; there were no prescriptive policy provisions or preferences for one method or the other. In relation to use of the 5% or 20% 'buffer' in connection with the vexed question of 'persistent under-supply', he observed that the expression assumed a failure to deliver the required amount of housing which had continued for a long time. Notably, he observed that need not be because of the LPA's 'deliberate default' [123]. It is a matter for the planning judgment of the Inspector hearing the appeal.

7. There have been a number of cases dealing with the adoption of LPs, Core Strategies, Neighbourhood Plans, etc. In:

7.1 *Gallagher Homes v. Solihull MBC* [2014] EWHC 1283 Admin the judge reemphasised the need for a plan to meet the full objectively assessed housing needs in the housing market area before going on to decide whether there constraints which mean that the OAN could not be met and what flows from that [76-78, 93-94]. In doing so earlier housing data (i.e. not from a current SHMA) but, e.g. from an earlier regional strategy exercise can be used but that should only be done 'with extreme caution' [98] because of the radical change in housing provision under the FW. There was also a Green Belt issue in the sense that the Inspector adopted the wrong test for revising GB boundaries and the report was faulty therefore in that respect too. His decision was upheld by the CA: [2014] EWCA Civ 1610.

7.2 In *R. (Gladman Developments) v. Aylesbury Vale DC* [2014] EWHC 4233 Admin, the draft Aylesbury Vale LP had been rejected by the examining Inspector. However, within Aylesbury Vale there was a Winslow Neighbourhood Plan which provided that development outside a settlement boundary would only be approved in exceptional circumstances. Lewis J held that can include policies for housing development including its location even when there is no DPD setting out strategic policies for housing [74]. Similarly, in *R. (Larkfleet Homes) v. Rutland CC* [2014] EWHC 4095 it was held that the neighbourhood plan could contain site specific allocation policies despite the effect of the local plan Regulations.

[5] See also *Stradford-upon-Avon DC v. SSCLG* [2013] EWHC 2074 Admin at [25].

7.3 A different slant on the approach to OAN is provided by *Grand Union Investments v. Dacorum BC* [2014] EWHC 1894 Admin. Lindblom J had to deal with the adoption of a Core Strategy which had had not first assessed the full housing needs of the area although the LPA had committed itself to an early review in which that work would be done. The issue was the soundness of the Core Strategy and there was no imminent shortfall in HLS. The Inspector's approach was, in the circumstances, a rational one and the CS had been properly adopted.

Listed Buildings and Conservation Areas

8. By now the CA's decision in *Barnwell Manor Wind Energy Ltd. v. East Northants DC* [2014] EWCA Civ 137 is well-known. In summary:

- The desirability of preserving LBs and their setting and the character and appearance of conservation areas are not mere material considerations to which the decision maker can attach such weight as it thinks fit.
- When a development harms the LB or its setting or the character or appearance of a conservation area, it must give that harm considerable importance and weight.
- The harm gives rise to a strong presumption against the grant of planning permission.
- The presumption is not irrebuttable. It can be outweighed by material considerations powerful enough to do so.
- The degree of harm to the LB/conservation area is a matter for the planning judgement of the decision maker, e.g., whether it is substantial or less than substantial. If it is the latter, the strength of the presumption is lessened but it does not follow that the 'strong presumption' against grant has been entirely removed [28].
- Even if the harm is less than substantial the decision maker must not overlook, in the balancing exercise, the overarching statutory duty which 'properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all listed buildings ...' [28].
- The error made in *Barnwell* was to treat the less than substantial harm to the LB as a less than substantial objection to the grant of planning permission.

9. in *R. (Forge Field Society) v. Sevenoaks DC* [2014] EWHC 1895 Admin, Lindblom J applied *Barnwell* to the situation of a Conservation Area and struck down a permission because the committee had not given the harm to the CA considerable importance and weight.[6] They had found that the harm was not 'overriding' which was to invert the test. The committee should also have considered alternative sites because there were clear objections to, as well as benefits of, the proposed development. Finally the judge dealt with two other matters:

    - The committee had considered a second application for the same development during the JR process. That was not by itself evidence of bias or predetermination. JR did not suspend the normal process of development control.
    - The judge pointed out: "Whether this success [of the JR] will lead to a different decision on the planning merits is in my view doubtful, to say the least. The claimants should not expect that it will. But they are entitled to a lawfully taken decision .... " [96].

10. In a case involving impact of WTGs on a Grade 1 listed building and a National Park, Dove J held that significant weight should be given to the views of statutory consultees like Natural England or, in this case, the Parks Authority. The SoS had not acted irrationally in dealing with the conflicting views of the authorities [*RWE Innogy Ltd. v. SSCLG* [2014] EWHC4136 (Admin); see also *R. (East Meon Forge and Cricket Ground Protection Association) v. East Hants DC* [2014] EWHC 3543 Admin where Lang J similarly held that the views of Sport England (conflict between the use of the cricket ground and the use of the Forge as a residence and the risk of damage from cricket balls) should be given considerable weight and only departed from for good reason [109].

11. In *R. (Gerber) v. Wilts Council* [2015] EWHC 524 Admin, Dove J (again) had to deal with a complicated set of facts relating to the grant of permission for a solar array which had a harmful impact on a G2* LB. The very briefest summary (judgment of 111 paras.) is that Mr. Gerber, as a neighbour, was not consulted about the application. Nor was English Heritage. Permission was granted. EH were then consulted on an amended application and advised that this caused harm to the LB. It seems that this is a case where the Council managed to get almost everything wrong in dealing with the application. The failure to consult EH on the original application was, the

[6] Another case where the officers/committee did not apply the *Barnwell* test in relation to a conservation area and harm to it (and hence the decision was struck down) is *R. (Hughes) v. South Lakeland DC* [2014] EWHC 3979 Admin.

judge held, a clear legal error. Furthermore, the council had also failed to discharge its duty under ns. 66 LBA applying the *Barnwell* principle. And further, Mr. Gerber had a legitimate expectation that he would be consulted on the applications (stemming from the Council's Statement of Community Involvement). Finally, the Council had fallen into error in dealing with a screening opinion and had not dealt with the fundamental issue of whether the development would be likely to have significant environmental effects. The judge had to consider whether the delay in bringing the claim (something over a year) barred relief. He held, on the very unusual circumstances, that it did not and the permission was quashed (the Council having submitted that only declaratory relief should be granted).

12. Dylan Thomas came to haunt the planning system in a case involving a WTG (only 45 m to blade tip) overlooking the estuary of the R. Taf. It was on the opposite side of the estuary from Laugharne and in particular directly opposite Dylan Thomas' boathouse and writing shed which are LBs. The permission was quashed on the basis that the screening opinion should have found that an EIA was required. The officer had conflated the issue of whether the impact was merely local (it probably was) with whether it was significant. The latter was the relevant question which he had not properly addressed (see *R. (Davies) v. Carmarthenshire CC* [2015] EWHC 230 Admin).

Green Belts and landscape

13. The CA, in *SSCLG v. Redhill Aerodrome Ltd.* [2014] EWCA Civ 1386, has put to rest the meaning of 'any other harm' in FW 88.[7] It refers to not merely harm to the GB but any other harm that has planning consequences, e.g., landscape character, adverse visual impact, noise and so on. In the *River Club* case, under PPG2, the judge had found that this is what it meant.[8] However, in the court below the judge had decided that *River Club* was wrongly decided and that the different policy matrix of the FW meant that the approach to 'any other harm' should be different. This has been reversed by the CA.[9]

14. Another, but less important, CA decision on the GB is *Wood v. SSCLG* [2015] EWCA Civ 195. where FW 89 was considered and the exception to inappropriate development of 'limited infilling in villages'. The fact that

[7] " ..... local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."
[8] See *R. (River Club) v. SSCLG* [2009] ewhc 2674 Admin at [26-27].
[9] The irony is that the judge in both cases was the same (Frances Patterson QC sitting as a Deputy HCJ and Patterson J).

the site lies outside the village boundary in the DP is not conclusive; the decision maker has to decide whether as a matter of fact on the ground the site appeared to be in the village.

15. In *R. (Luton BC) v. Central Beds Council* [2014] EWHC 4325 Admin, Holgate J had to consider, *inter alia*, whether a council which granted permission for an urban extension in the GB (262 ha, 5150 dwellings) should have looked at alternative sites. The court had to distinguish between cases where the decision maker was *obliged* to take into account alternatives and those where he could take them into account if he considered it appropriate to do so (see *Derbyshire Dales DC v. SoS* [2009] EWHC 1729 Admin). In this case there was nothing in the legislation nor in policy or guidance which obliged alternative sites to be taken into account and the council was not irrational, in the circumstances, in deciding not to take them into account.

16. An interesting approach to material considerations in relation both to renewable energy considerations and the GB is the CA's decision in *R. (Holder) v. Gedling BC* [2014] EWCA Civ 599. The report to committee, on a WTG application in the GB, was unlawful and misleading because it described as 'non-material planning issues' representations that:

- permission would set a precedent for further WTG developments nearby;
- there were alternative methods of producing renewable energy; and,
- the WTG would be inefficient.

17. What I think is an interesting and important case about the way the FW and the courts approach harm to 'ordinary' landscape is *Stroud DC v. SSCLG* [2015] EWHC 488 Admin. Stroud has a slightly unusual landscape in that there are 5 valleys or 'fingers' of land that extend, partly from the AONB, almost into the centre of the town. They are highly valued locally but, with the demise of local landscape designations as a result of national policy from about 1997, tend not to be formally protected - unless they form part of the setting of the AONB. FW 109 therefore has importance: "The planning system should contribute to and enhance the natural and local environment by ... protecting and enhancing valued landscapes ..... ". What is a 'valued' landscape. It is undefined in the FW. Developers, understandably, tend to argue that it means a landscape that has some sort of national or local designation.[10]

[10] See an Inspector's decision to the contrary on this issue on development in one of the Stroud Valleys APP/C1625/A/13/2197307 and /A/14/2213711.

18. Ouseley J held that:

- the Inspector would have erred if he if he had concluded that designation was the same as valued landscape. "The NPPF is clear: that designation is used when designation is meant and valued used when valued is meant and the two words are not the same." [13].
- The Inspector's approach: that the land should show some 'demonstrable physical attributes' rather than just popularity for it to be valued was a proper one [9, 15, 18].
- Interestingly, he also held that FW 115 covered the impact on scenic beauty of land actually within the AONB; also of land outside the AONB when viewed from *within* the AONB; but not views of the AONB from land *outside* the AONB.

Some other decisions

19. Under section 70C TCPA a LPA has a discretion to refuse to determine retrospective applications for development subject to an EN. Such decisions can be JRd but, as Cranston J said when dismissing such an application, examples would be where there was evidence, for legitimate reasons, of failure to appeal an EN and the development is plainly compliant with planning provisions; or development can readily be made acceptable by appropriate planning conditions. In this case the council was entitled to infer that the application for permission was simply a delaying tactic (*Wingrove v. Stratford-upon-Avon DC* [2015] EWHC 287 Admin).

20. An issue of unfairness by an Inspector in failing to give a neighbour objector an opportunity to comment on a change of description of the development was *Carroll v. SSCLG* [2015] EWHC 316 Admin. That was because the change in description (from B1 to B8) meant that the restrictive policies of the council did not apply and hence the Inspector granted permission. There were representations the neighbour could have made which might have persuaded him to dismiss the appeal.

21. A slightly arcane but no doubt financially important issue was a challenge by a council to an Inspector's decision that a requirement to pay £3,750 for administration and monitoring fees was unlawful as they did not comply with reg. 122 CIL Regulations. Lang J held that there was nothing in the Act or the CIL Regs or in policy or guidance which suggested could or should claim administration or monitoring fees as part

of s. 106 obligations. The fees claimed were part of the authority's resources and budgets for the discharge of its functions under s. 106.

22. *Hiam v. SSCLG* [2014] EWHC 4112 Admin raises an issue which is often a sore point with aggrieved appellants. An Inspector has got the facts wrong (they say); is this a proper ground of appeal? The judge held that it was (applying *E. v. Home Secretary* [2004] QB 1044). There must be an error of fact giving rise to unfairness. This could be a ground of appeal on a point of law in planning cases. However, the fact was 'not uncontentious'; the claimant was responsible for the mistake; and the mistake did not play a material part in the Inspector's decision. Hence, in this case there were no proper grounds for appeal.[11]

23. The CA has given guidance on costs and the Aarhus Convention in *Venn v. SSCLG* [2014] EWCA Civ 1539. A s. 288 appeal fell within art 9(3) of Aarhus. However, that did not mean that the claim was an Aarhus Convention claim for the purposes of CPR45.41 because that is expressly limited to JR claims and the omission of statutory appeals and application was deliberate. Sullivan LJ further held that that, in exercising the court's discretion to grant PCO protection outside the statutory regime, the court must follow the *Corner House* principles.[12] The result was that the costs protection regime under CPR45.41 was not Aarhus compliant insofar as it was confined to JR applications. It would be necessary therefore for the Government to take legislative action to remedy the position.

24. As in *Gerber's* case (above), issues of extensions of time arose in *R. (Carnegie) v. Ealing LBC* [2014] EWHC 3807 Admin. Grounds and statement of facts were not supplied until after the 6 week time limit. However, the claimant had attached a copy of the PAP letter to the claim form and this closely resembled the later grounds. There was no prejudice and time was extended but the claim dismissed.

25. In *Harrogate BC v. SSCLG* [2014] EWHC 1506 Admin the judge granted an extension of time under s. 288 where the service of the application was only 2 days late. Additionally, there was a public interest in the determination of a claim which the SoS had conceded as being wrong in law. There was no significant prejudice. Note: that the judge applied the principles in the post-*Mitchell* regime.

[11] See also Hickinbottom J in *Speers v. SSCLG* [2014] EWHC 4121 Admin at [43, 48].
[12] *R. (Corner House Research) v. SSTI* [2005] EWCA Civ 192 and *R. (Garner) v. Elmbridge BC* [2010] EWCA Civ 1209.

26. The issue in *Arsenal FC v. SSCLG* [2014] EWHC 2620 Admin was whether the Inspector had properly applied s. 38(6) (that the decision must be made in accordance with the DP unless material considerations indicate otherwise). The judge pointed out that a decision had to be read as a whole, that strands of the DP pulled in different directions and that the Inspector had to resolve the conflict between economic objectives and those policies which dealt with the protection of amenity. He had considered and resolved the conflict albeit in a way unacceptable to the club.

27. In *Shortt v. SSCLG* [2014] EWHC 2480 Admin the court had to consider the meaning of 'dependants' in an agricultural occupancy condition. The claim arose from a CLU application because Mrs. Shortt argued that she had occupied the premises not being an agricultural worker and that her family were not her dependants, there being no financial dependency. The judge held that 'dependant' was not confined to someone who was financially dependant. It comprehended the spouse and minor children living with the worker.

28. In a slightly unusual fall from grace by the SoS, one of his decisions was quashed because he had failed to consider whether the proposal was in accordance with the DP. The court could not ascertain whether, and how, the SoS had applied s. 38(6) (*Lark Energy v. SSCLG* [2014] EWHC 2006 Admin).

29. In another case a disgruntled neighbour claimed that he had been unfairly deprived of an opportunity of commenting on post-permission approval of details relating to drainage and manure disposal. No doubt to the relief of the LPA the judge dismissed the claim holding that there was no provision in the Act or the circular for such consultation nor was it the general practice to do so (*R. (Hayes) v. Wychavon DC* [2014] EWHC 1987 Admin).

30. Should the SoS undertake a site visit particularly if he is going to depart from his Inspector's recommendation? The answer is probably 'no'. Even where the issue is visual impact (in this case 4 WTGs) the SoS was entitled to rely on the material that was before the Inspector - e.g., computer generated images, comments of the parties on them, comments of witnesses on visual impact and so on (*Econtricity (Next Generation) Ltd. v. SSCLG* [2015] EWHC 801 (Admin)).

31. A slightly unusual case involving powers of officers to make decisions in the light of the scheme of delegation was *R. (Pemberton International Ltd.) v. Lambeth BC* [2014] EWHC 1998 Admin. The issue was whether, under s. 101 LGA, an officer with delegated authority could sub-delegate to another officer. Lewis J held that he could not but that, on the facts, there had been no sub-delegation and that a certain group of named officers were, on the interpretation of the scheme, authorised to exercise the relevant functions.

32. *R. (Cherkly Campaign Ltd.) v. Mole Valley DC* [2014] EWCA Civ 567: a number of issues about development in or adjacent to the AONB arose in this case but one point of interest is what is 'saved' when DP policies are saved by SoS direction. Is it the policy text alone or the supporting text as well? The answer is that it is both.

33. In *Newham LBC v. Ali* [2014] EWCA Civ 676 the CA considered the principles for the grant of a s. 106 injunction. The judge had granted the injunction to enforce the terms of the s. 106. The CA suspended the effect of the injunction until after appeals to the SoS were known because of the short time period involved and the impact on the community of the enforcement of the injunction.

34. In *Ellaway v. Cardiff CC* [2014] EWHC 836 Admin, Wyn Williams J has reaffirmed the applicability of the *Whitley* principle and its exceptions and their compliance with EU law.

Judicial review

35. The reform of judicial review has been one of the most debated subjects in the final sessions of this Parliament. The Criminal Justice and Security Bill was introduced on 5th February 2014 and received Royal Ascent, not without some ping pong between the two Houses, on 12th February 2015.

36. Despite some concessions during the passage of the Bill, the provisions now on the statute book remain divisive. Most significantly with regard to the granting of leave or relief. Under the terms of section 84 of the Act, neither shall be granted where it appears "highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred".

37. This will be left to judicial discretion and we wait to see how it will be interpreted. It is interesting to note, as Lord Pannick did in the final debate in the House of Lords, the words of the Lord Chancellor when assessing what the provisions were intended to prevent. He said that it is designed to prevent judicial reviews being heard when they are "based on relatively minor procedural defects in a process of consultation … That is what these proposals are all about".

38. The High Court is not bound to refuse leave or relief if the test in section 84 is not met. They can, under section 2 of the Act, for "reasons of exceptional public interest", disregard the requirement. We wait to see what the courts consider amounts to "reasons of exceptional public interest".

39. The Act does not stop there. It also imposes greater financial penalties on unsuccessful applicants for JR, and potentially other person funding the application (according to the Lord Chancellor this is to stop JR being supported by the "*countless left-wing campaigners*" whom he considers do so in order "*to disrupt the process of government*").

40. On interveners, they can no longer recover costs from their participation and they will have to pay the costs of a party to the JR who applies to the courts and meets the criteria in section 87(6). These being – if the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent; the intervener's evidence and representations, taken as a whole have not been of significant assistance to the court; a significant part of the intervener's evidence and representations relate to matters outside the JR; or, the intervener has behaved unreasonably.

41. The court can chose not to apply these costs conditions, but only in "exceptional circumstances".

42. Finally on cost capping, the Act seeks to codify the process for Protective Costs Orders. The changes from the existing system include only making the order if leave has been granted. The court must be satisfied that the proceedings are public interest proceedings; that the applicant would withdraw or cease proceedings without the PCO; and, it would be reasonable for the applicant to do so. The Act defines "public interest proceedings" as an issue that is of general public importance; the public interest requires the issue to be resolved; and, the proceedings will provide an appropriate means of resolving the issue. It continues to set

out what the court should consider when determining whether proceedings are in the public interest, including the number of people likely to be affected; the significance of the effect; and whether the point of law is of general importance.

43. The reaction to the proposals from the legal profession would suggest that the implementation of the Act will be one to watch over the coming months. Whether or not these sections will be repealed depending on the outcome of the General Election remains to be seen.

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