

Briefing note from Protect Dunsfold Limited to Dunsfold Parish Council meeting on 7 June 2023

Leave has been given to Protect Dunsfold Ltd and Waverley Borough Council for a full judicial review hearing on 8 June 2023 to challenge the grant of a 3 year planning consent for exploratory drilling to UKOG (234) Ltd (part of the UKOG plc group).

Protect Dunsfold Ltd has obtained leave on two grounds –

Ground 1: Failure to take into account NPPF policy on AONB impacts.

Paragraph 176 of the NPPF provides that great weight should be given to “*conserving and enhancing landscape and scenic beauty*” in AONBs. Nowhere in the conclusions of the Inspector’s Report or the Secretary of State’s (SoS) Decision Letter is that requirement acknowledged or factored into the balancing exercise.

Ground 2: Error of law: Inconsistencies in approach to unmitigated climate impacts and approach to NPPF paragraph 152¹.

3 decisions were published by the SoS on the same day in June 2022. First, Dunsfold where consent was given. Second a case known as “Ellesmere Port” where consent was refused and a third case, Woodsetts, where consent was also refused. In Ellesmere Port, the SoS also concluded that as a result of the unmitigated CO₂ there was conflict with paragraph 152 of the NPPF and that carried moderate weight against the grant of consent for the proposed development and consent was refused. However, in the Dunsfold case, the SoS did not even mention paragraph 152 of the NPPF despite the obviously similar greenhouse gas impacts of the proposals (the Dunsfold development on UKOG’s own figures having somewhat higher predicted emissions than at Ellesmere Port²).

The principle of consistency in planning decision-making is important and well-established. To obtain leave, our KC successfully argued that the Dunsfold and Ellesmere Port decisions are irreconcilable in their approach to both unmitigated CO₂ emissions and paragraph 152 of the NPPF. She pointed to the fact that the amount of predicted greenhouse gas emissions from both projects is remarkably similar. In Ellesmere Port, these emissions played a material part in leading to the dismissal of the appeal. Yet in the Dunsfold case the SoS attached no weight to the issue of greenhouse gas emissions. The judge at the hearing for leave agreed that it was arguable that there had been a failure to regard to a mandatory consideration (the emissions) and/or that there is an arguable lack of reasoning in the SoS decision on Dunsfold and gave leave accordingly.

Waverley Borough Council has obtained leave on one ground also relating to landscape.

¹ “support renewable and low carbon energy and associated infrastructure”

² The uncontested evidence of UKOG was that there would be an unmitigated 28.77 – 29.11 kt CO₂e of operational emissions caused by their development. In *Ellesmere Port*, the estimate for total unmitigated operational greenhouse gas emissions was between 3.3 – 21.3 kt of CO₂e. In refusing permission, the SoS held that “*the unmitigated proportion of the GHG emissions carries significant weight against the proposal.*”