

**Case Name:** *Stephenson v Secretary of State for Housing And Communities And Local Government* 2019 EWHC 519 (Admin) (06 March 2019)

**Full case:** [Click Here](#)

**Commentary:** A challenge to the adoption of paragraph 209(a) concerning fracking in the 2018 NPPF was successful on grounds relating to the consultation on the 2018 NPPF but the relief has not yet been decided.

Paragraph 209 provides that: "209. Minerals planning authorities should: a) recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction.". This text was based on the 2015 written ministerial statement (WMS). The Court accepted that the exercise in relation to paragraph 209(a) was an exercise of copying across the 2015 WMS into the NPPF without any intention to revisit or re-examine the validity of the policy therefor there was no need to give consideration to any consultation responses on the merit of the policy of providing evidence in relation to it. However, it was held that the consultation materials did not make clear that the substance or merits of the policy was outside the scope of the consultation. The consultation breached the common law Sedley principles and was therefore unlawful because the Defendant had a closed mind as to the content of the policy and was not undertaking the consultation at a formative stage; had no intention of changing his mind about the substance of the revised policy; and did not conscientiously consider the fruits of the consultation exercise in circumstances where he had no interest in examining observations or evidence pertaining to the merits of the policy.

A further ground, that the Defendant had not considered the scientific evidence submitted by "Talk Fracking", was also successful. As it was clearly relevant, the response amounted to a material consideration and it was therefore unlawful to leave that material out of account.

The other ground was that the Defendant unlawfully failed to consider or explain the impact of the revision to the Framework on the Government's obligation under the 2008 Act in respect of greenhouse gas emissions. This was dismissed on the basis that the revisions to the Framework do not alter or diminish the requirement to meet the tests in the 2008 Act. However, the judge accepted that "individual decisions on plans or applications the in principle support for unconventional hydrocarbon extraction, provided by paragraph 209(a) of the Framework, will have to be considered alongside any objections and evidence produced relating to the impact of shale gas extraction on climate change. These are conflicting issues which the decision-maker will have to resolve."