

Case Name: *Friends of the Earth Ltd v Secretary of State for Housing, Communities And Local Government* 2019 EWHC 518 (Admin) (06 March 2019)

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Commentary: A challenge by Friends of the Earth to the adoption of the 2018 NPPF on the ground that it should have been subject to strategic environmental assessment was dismissed. The NPPF is not "required by legislative, regulatory or administrative provisions" (Article 2(a)) and therefore does not fall within the definition of a "plan or a programme" to be assessed under the EU Directive 2001/42/EC and the Environmental Assessment of Plans and Programmes Regulations 2004.

The Claimant argued that the NPPF did satisfy Article 2(a) because of statutory requirements that regard is had to national policy in planning decision taking and plan making and its importance in planning decision taking. However, it was held that the references to national policy in statute and its role in the planning system did not regulate or prescribe the need for the existence of national planning policy and there are no specific statutory or administrative provisions which govern or regulate the procedure for preparing or adopting national planning policy in the form of the Framework. Therefore, it does not fall under Article 2(a).

The judge did accept that there was a clear case to be made that the NPPF does satisfy the requirements of Article 3(2)(a) in that it "sets the framework for future development consent" but as it did not satisfy Article 2(a), the Directive did not apply.

Case summary prepared by Town Legal LLP