

**Case Name:** *Whitley Parish Council, R (On the Application Of) v North Yorkshire County Council* [2022] EWHC 238 (Admin) (09 February 2022)

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

**Commentary:**

This was an unsuccessful challenge to the grant of planning permission by North Yorkshire County Council (the "Council") to allow the extraction of approximately 23 million tonnes of pulverised fuel ash ("PFA") from the Gale Common Ash Disposal Site which lies wholly within the West Yorkshire Green Belt.

PFA is ash generated by burning coal and which can be used as a building product, particularly in the production of cement and concrete. It can reduce CO2 emissions as it reduces the amount of clinker used in cement and concrete (clinker being the stony residue produced by burning coal solely for use by the cement and concrete industry), and it reduces the need for raw materials (such as limestone, sand and clay) which would otherwise need to be extracted in order to produce cement and concrete.

The claim failed on all six grounds of challenge. The claimant's primary ground was that the grant of permission was contrary to the Court of Appeal's decision in the case of *Kemnal Manor Memorial Gardens Ltd v First Secretary of State* [2006] 1 P&CR 10. It argued that, in dealing with a proposal in the green belt, it is not appropriate to divide up the proposal into those parts which would be appropriate development in the green belt and those parts which would be inappropriate development and to then deem the proposal to be acceptable overall merely because part of it is appropriate. The claimant also argued that none of the exceptions for the construction of new buildings in the green belt were relevant.

The court disagreed and held that the Council had been entitled to rely on paragraph 145 of the National Planning Policy Framework and conclude that it was necessary to consider whether very special circumstances existed in assessing the impact of the development on the green belt. The court was satisfied that the officer's report acknowledged that the proposed development should not be approved except in very special circumstances and concluded that, taking all material considerations into account, the environmental benefits of PFA outweighed the negative aspects associated with the development, such that very special circumstances existed which outweighed the development being inappropriate in the green belt. The report also concluded that planning conditions and obligations could effectively mitigate the impact that the development would have on the amenities of local residents in the vicinity of the site by reason of hours of operation, noise, dust emission, visual impact or traffic.