
How planning decisions are challenged

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Planning Appeals

- S78 TCPA 1990; only applicant can appeal against:
 - Refused permission
 - Non-determination within statutory time frames
 - Granted subject to unreasonable conditions
 - Refusal of reserved matters
 - LPA to ensure that alternative avenues explored to avoid appeal; new application needed?
 - Carefully consider whether decision will withstand appeal
 - If against recommendations, document reasons in committee minutes; reasons should be clear
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Planning Appeals

Article 37 DMPO 2015

- Time limits from date of decision notice:
 - 12 weeks- householder/minor commercial appeals
 - 6 months- other applications
 - 28 days if enforcement notice served
- Right lost if not within relevant appeal period
- Cannot appeal if within agreed extension period of determination

Planning Appeals

Types of appeals:

- Written representations
 - Hearings
 - Local inquiries (formal method for complex cases)
 - Inspector will visit site in all types of appeal
 - PINS s319A determination of method on behalf of SoS within 7 working days
 - “Taking into account criteria, appellant’s & LPA’s views”
 - If valid appeal, PINS inform appellant & LPA of:
 - Appeal starting date, case reference & method
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Planning Appeals

- LPA will be notified of procedure and then required to send to PINS and appellant appeals questionnaire and all relevant material
- Useful for LPA to suggest conditions to mitigate; include s106 if possible as conditions usually discussed at hearing
- Identify any factual errors in grounds of appeal
- Alert PINS to material changes since decision made e.g. changes to policy or relevant decisions made
- Notify interested persons of appeal within one week

Planning Appeals

Outcome

- Cannot change decision; may correct errors in decision
- LPA responsible for monitoring implementation
 - Power to take enforcement action
- Cost awards
 - Available in all appeals
 - Parties meet own costs, unless unreasonably behaved
- s288 TCPA 1990 “statutory challenge”: point of law challenged in High Court within 6 weeks; otherwise judicial review

Judicial Review: Procedure

Procedure: Part 54 CPR

- Remedy of last resort- alternative method of challenge?
- Application within 6 weeks of decision taken
- Permission must be granted first

Standing:

- s.31(3) of Senior Courts Act 1981: 'sufficient interest'
 - Court to use discretion for 3rd parties e.g. public interest
 - Interested parties must be named
- Judicial review only third party right against decision

Judicial Review: Procedure

- Pre-action letter sent; LPA 14 days to respond
- LPA to request time extension if necessary
 - Without prejudicing time limits
- Judge to provide directions for substantive hearing
 - Public hearing before single judge
- Successful challenge: decision overturned & returned to PINS or LPA
 - Can result in same decision being taken

Judicial Review: Grounds of appeal

Irrationality

- Challenge possible where demonstrated that LPA:
 - Not taken into account relevant factors;
 - Taken into account irrelevant factors; or
 - Acted perversely
- Duty to take into account material considerations
- However, must exercise discretion

Judicial Review: Grounds of appeal

Procedural impropriety

- Failure to follow express procedures
 - E.g. consultation on development plans and publicity for planning applications
- Natural justice
 - No perception of bias
 - Allow for fair hearing and proper consultation
 - Issues of bias often raised by 3rd parties

Judicial Review: Grounds of appeal

Procedural impropriety

- Legitimate expectations
 - Policy may support approach, or statement made to that effect
 - Access to information
 - LPA to ensure:
 - Individual put their case forward & all evidence heard
 - Those with 'legitimate expectation' are consulted
 - Applicant can access relevant documents
 - Sufficient reasons are provided for decision
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Judicial Review: Grounds of appeal

Unreasonableness

- So unreasonable as to be 'irrational' or 'perverse'
- Argued with other grounds

"If a decision on a competent matter is so unreasonable that no reasonable authority could ever had come to it, then the courts can interfere... but to prove a case of that kind would require something overwhelming.."

Associated Provincial Picture Houses Ltd v Wednesbury Corporation
[1948] 1 KB 223 HL

Judicial Review: Outcomes

- Mandatory, Quashing & Prohibiting orders
 - Can compel LPA to act in certain way
 - Quashed decision remitted to LPA to consider afresh
 - Prohibits LPA from taking intended action
- Ordinary declarations:
 - Statement on law; declares LPA's actions un/lawful
 - Not coercive; although LPA expected to follow

Ombudsman Complaints

- LGO or PHSO:
 - Can only consider maladministration and process
 - Neither Ombudsman has the legal power to change a planning decision once made
 - Relevant complaints procedures should be used first

Outcomes:

- Steps to reduce harmful effects of LPA decision
- Agreed changes to scheme (LPA may need to pay for)
- LPA may have to pay compensation
- Recommend changes to LPA procedures

Planning Decisions: Tips

- Early engagement with applicant to identify ADR, or changes to the scheme
- Ensure decisions are well documented & reasons can be clearly identified
- All material considerations taken into account
 - Clear demonstration that decision based on relevant factors
- Decision reached is reasonable and has followed correct procedure

Case Law: Consultation / Procedural Expectation

R (Majed) v Camden LBC [2009] EWCA Civ 1029

- Council SCI stated that local residents would be consulted in relation to certain developments.
- Court rejected Council argument that they were not obliged to consult such groups because it went beyond statutory duty under GDPO.
- Held: Residents had expectation of being consulted. Declaratory relief given, although decision not quashed.

R. (on the application of Vieira) v Camden LBC [2012] EWHC 287 (Admin)

- Judicial review against LPAs decision to grant retrospective planning permission for conservatory and trellis in conversation area
- LPA briefing panel decided to refer decision pending revised plans for trellis. Application subsequently approved following receipt of revised plans
- Officers report and revised plans not shared with objecting neighbour despite SCI suggesting that revised plans would be shared.
- Held: Neighbour had procedural expectation of being consulted on revised plans. Also relief should be granted notwithstanding low prospect of successfully objecting. Outcome would have to be inevitable. Decision quashed.

R. (on the application of Halebank PC) v Halton BC [2012] EWHC 1889 (Admin)

- Parish council given 21 days to consider and respond on application for storage and distribution warehouse. Period commencing in August. Holiday commitments of members made it difficult to adequately consider proposal. Request of extended period of time rejected by LPA.
- Referred to govt. guidance and argued legitimate expectation of being given extended period of time to adequately consider proposal.
- Held: LPA decision unlawful. Inadequate consultation carried out. Decision quashed.

Case Law: Fairness

Dudgeon Offshore Wind Ltd v Secretary of State for Communities and Local Government [2012] EWHC 861 (Admin)

- Claimant appealed against dismissal by SoS of appeal against LPA's refusal of permission to build electricity sub-station. At appeal inspector had refused to hear submissions regarding the suitability (or lack therefore) of alternative sites. Inspector had assured the parties this would not be taken into consideration.
- Inspector subsequently stated in decision notice that alternative sites was a "main issue" and that there was a possibility of locating the station elsewhere.
- Held: a breach of natural justice. Appellant should be afforded the opportunity to respond to an issue of importance in respect of the inspector's decision.

Case Law: Policy Considerations

Suffolk Coastal DC v Hopkins Homes Ltd [2017] UKSC 37

- The words "policies for the supply of housing" in the National Planning Policy Framework para.49 simply indicated the category of policies with which the paragraph was concerned, namely housing supply policies. Although other groups of policies, such as policies for the protection of the countryside, could affect the operation of housing policies, that did not make them policies for the supply of housing. In so far as the objectives in para.47 were not met by housing supply policies, it was natural to describe those policies as out-of-date for the purposes of para.49.
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R (Boot) v Elmbridge BC [2017] EWHC 12 (Admin)

- Permission for sports facility on green belt
- Report considered NPPF para 89: buildings on green belt regarded as inappropriate- sport & recreation appropriate if preserve openness of green belt
- Resident argued:
 - Harmed openness and purposes of green belt
 - Development on adjacent green belt inappropriate

R (Boot) v Elmbridge BC [2017] EWHC 12 (Admin)

Held:

- Paragraph 89 did not permit any harm at all to the openness of the green belt
- If any harm at all, must consider special circumstances justifying development:
 - No justification that adverse impact not significant
- Previous planning appeal could amount to material planning consideration
 - Consider if materially dissimilar & distinguishable

Questions?



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