A GUIDE TO JUDICIAL REVIEW IN THE PLANNING COURT

Stephens® Scown

What is Judicial Review?

Judicial Review is the process by which the courts review the lawfulness of a decision made or action taken by a public body. Sometimes the courts will be reviewing the lack of a decision made or a failure to act on the part of a public body.

The role of the Court is not to re-make the decision being challenged, or to consider the merits of the decision, but to review whether the process by which the decision was reached was flawed and determine whether that decision should be quashed.

This guide deals with Judicial Reviews in the Planning Court, where the Court reviews the decisions of local planning authorities and the Planning Inspectorate.

On what grounds can a Judicial Review be brought?

For a successful challenge, a claimant must convince the Court that the local planning authority's or Planning Inspector's decision falls within one of the following four categories:

1. That the decision was illegal; this may arise where the public body has got the law wrong and exercised a power incorrectly or where they have exercised a power that they do not have.

2. That the decision was irrational; where a public body has taken into account immaterial considerations or failed to take into account material considerations, or where its decision was so unreasonable that no reasonable decision-maker could ever have come to it.

3. That the decision was procedurally unfair; where a public body has not followed a statutory procedure, there was bias or an affected party was unfairly prevented from making their representation.

4. Where there is legitimate expectation; where a public body, for example, has said specifically that it will follow a particular procedure in making a decision but then does not and a party is prejudiced as a result. These challenges are rare.

Judicial Review is not available where there is an alternative remedy, e.g. an appeal procedure.

How quickly do you need to act?

Judicial Review requires permission from the Court to proceed and an application for permission for Judicial Review of a planning decision must be made within 6 weeks from the date of the decision.

The 6 week time limit is strictly applied and it is therefore best to seek legal advice as early as possible when a decision, or possible decision, by a local planning authority causes concern. It is possible to seek permission for Judicial Review after 6 weeks, however, this is rare and permission to proceed with late claims is given at the discretion of the Court.

You also need to bear in mind that ideally you should inform the decision maker of your intention to bring a claim for Judicial Review in a pre-action protocol letter. This letter should usually give the defendant 2 weeks to respond to your proposed claim.

Who can bring a claim?

Not everyone can bring a claim for Judicial Review; applicants must have sufficient interest in the matter the claim relates to.

Whether an applicant has sufficient interest will be case specific and there is no general definition of “sufficient interest”.

Broadly speaking, a claimant must show that they are affected to some extent by the decision made. For example they may be the appellant in a planning or enforcement appeal. Interest groups have also been successful in claims for Judicial Review in the past, where the claim has been brought in the public interest.

What will it cost?

Anyone considering brining a claim for Judicial Review should be prepared for the reality that the costs of bringing or defending Judicial Review claims can be very high. A standard Judicial Review claim can cost around £35,000 in Solicitor’s and Barrister’s fees and other costs (including court fees).

It must also be borne in mind that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the Court has discretion as to whether costs are payable by one party or another.

Under the Aarhus Convention, where a claim involves certain environmental issues a limit of £5,000 (for an individual) and £10,000 (where the claimant is not an individual) may be applied to the amount of costs that the claimant may be ordered to pay of the successful party’s costs. In these cases where a defendant is ordered to pay the claimant’s costs, the limit is £35,000. These limits can be varied and a claim which seeks to apply the limits must be accompanied by a statement on the Claimant’s financial resources.

It is possible for a group of people to ‘crowdfund’ and contribute to the costs of a Judicial Review claim.

You may appeal a decision of the Planning Court to the Court of Appeal.....this must be done swiftly....

What steps are there in the Judicial Review process?

Pre-action stage

a. Claimant serves pre-action protocol ('PAP') letter on Defendant and Interested Parties;

b. Defendant responds to PAP letter (potential for claim to be settled);

Permission stage

c. Claimant issues claim seeking permission to bring a Judicial Review;

d. The Defendant and Interested Parties respond with Summary Grounds of Defence;

e. The Planning Court makes a decision (usually on the papers) as to whether the case is arguable (not whether it will ultimately succeed or not);
   - If permission is refused an oral hearing can be sought for permission – if permission is refused the claim ends;

Hearing stage

f. If permission is granted then the Defendant and Interested Parties respond with Detailed Grounds of Defence;

g. A date is set for the case to be heard in court;

h. Judgment is given and orders made.

A case which proceeds to a full hearing can take around 6 months from the date of the claim to judgment.

What are the potential outcomes?

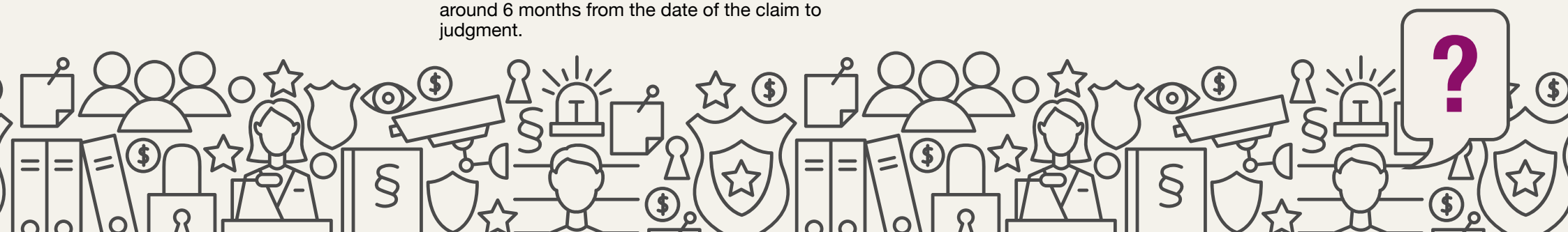
The most common remedies sought in Judicial Review are an order that quashes (cancels) the decision complained of and an order for costs to be awarded in favour of the successful party. Where a decision is quashed the decision has to be taken again by the local planning authority or the Planning Inspectorate.

The Court can also issue orders requiring or prohibiting certain actions or make a declaration though is relatively rare in planning cases.

All of the remedies available to the Planning Court are discretionary, i.e. even if a claim succeeds it does not automatically follow that the decision will be quashed. In fact, legislation requires that if it appears to the Court to be highly likely that the outcome would not have been substantially different if the conduct complained of had not occurred, the court must refuse to grant relief on the application for judicial review. For example, this means that a claim for Judicial Review which succeeds on a 'technicality' which did not actually effect the outcome of the decision can be overlooked and the permission remain intact.

Whilst there are not any readily available statistics, a good working basis is that around 1/3rd of all claims against Local Planning Authorities get permission to proceed and of these, about 1/6th are ultimately successful. However, these figures include cases which are withdrawn, so the figure is around 5-10% overall, so getting good advice at the outset is key.

You may appeal a decision of the Planning Court to the Court of Appeal, however, this must be done swiftly and having first taken advice on the prospects of any such appeal.



CASE STUDY

Cornish Action Group

A group of local people opposed a development without proper consideration of the environmental effects.

After seeking early advice from Stephens Scown's planning team the objectors made a claim for Judicial Review. The claim was against the local Council's decision to grant planning permission in a designated Area of Outstanding Natural Beauty without an environmental impact assessment ('EIA').

The judge found that the Council's grant of planning permission was unlawful and that in addition it was unreasonable for the Council to grant permission without waiting for the Secretary of State's decision on whether EIA was required.

The grant of planning permission was quashed, which left the application for planning permission to be determined again by the Council, however, the developer withdrew the planning application.

TOP TIPS

- Remember, as a general rule, that the time limit for challenging a planning decision is 6 weeks. Preparing a strong claim for Judicial Review is time consuming and it is best to seek legal advice as early as possible.
- It is important to bear in mind, whether you are challenging a decision or your decision is subject to a challenge, that a successful Judicial Review does not reverse the decision made; it cancels it and the planning decision will need to be determined again by the relevant public body.
- The general rule with costs is that the unsuccessful party will be ordered to pay the legal costs of the successful party.

WHY STEPHENS SCOWN?

Our planning team regularly acts for Claimants and Interested Parties in claims for Judicial Review and will be able to give you clear advice at the outset on the potential outcome of your case and the likely costs. We have both local and national expertise.

The Stephens Scown planning team are ranked in the UK's top two independent legal guides, Chambers and Legal 500 and advise clients across Devon and Cornwall on a variety residential and commercial development projects.

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