

PLANNING

Introduction

- 1 Planning is a very broad subject. The aim of this Note is not to set out the substantive law but to outline the appeal mechanisms which are of interest to many local councils.
- 2 Local councils may become involved in planning matters in one of three ways:
 - as applicants for planning permission;
 - as proposers of a Neighbourhood Development Plan or Order; and
 - as interested parties.

Appealing decisions as an applicant for planning permission

- 3 Section 78 of the Town and Country Planning Act 1990 provides that applicants for planning permission (and *only* applicants) can appeal the decision of a local planning authority (LPA) where the decision of the LPA is:
 - to refuse an application for planning permission or to grant it subject to conditions;
 - to refuse an application for any consent, agreement or approval required by a condition imposed on a grant of planning permission or to grant it subject to conditions; or
 - to refuse an application for any approval required under a development order, a local development order, a neighbourhood development order or to grant it subject to conditions.
- 4 Appeals are made to the Secretary of State (and heard by the Planning Inspectorate) and are of three types. Two of these types, known as Type A or Type B, relate to land which is the subject of an enforcement notice. The third type (unnamed) is any other appeal. Any appeal must be made pursuant to the time limits within Article 33(2) of Town and Country Planning (Development Management Procedure) (England) Order 2010/2184. A Type A or Type B appeal has to be made within 28 days of the date of the decision letter or service of the enforcement notice. An appeal by a householder against a refusal of

planning permission has to be made within 12 weeks of the date of decision letter. Any other appeal (including a householder appeal against permission granted with conditions) must be made within 6 months of the date of the application decision letter (or in the case of non-determination, within 6 months of the date the decision should have been made).

Appealing as an interested party

- 5 Local councils may request the local planning authority (LPA) to notify them of planning applications in their area (paragraph 8 of Schedule 1 to the Town and Country Planning Act 1990 (as amended)). The LPA must (i) send a copy of relevant planning applications to the local council (ii) give them an opportunity to make representations as to how the applications should be determined, (iii) consider the representations made by the local council and (iv) notify the local council of their decisions. However, as stated above, only an applicant for planning permission can appeal the decision of a local planning authority and such an appeal can only be made in limited circumstances. The right of appeal does not extend to interested parties such as local councils or local residents and, therefore, any action they contemplate will need to be outside the planning legislation.

Judicial Review

- 6 The decisions of local planning authorities are susceptible to judicial review. There are a number of hurdles to overcome:
- applicants for Judicial Review will need to demonstrate that they have “standing” – i.e. that they have sufficient interest in the decision made;
 - applicants will need to go through a two-stage process. They will need to gain “permission” to apply for Judicial Review (which is a filtering process to weed out claims which clearly lack merit) and, if permission is granted, they will then proceed to a full hearing;
 - applications for Judicial Review need to be made promptly and within 3 months of the relevant decision in any event;
 - before applying for Judicial Review applicants should send a “letter before claim” as set out in the “Pre-Action Protocol for Judicial Review” published by the Ministry of Justice.

The Letter Before Claim

- 7 It is normally good practice to send a “Letter Before Claim” before commencing all litigation. Such a letter may be particularly sensible in respect of a Judicial Review matter because:
- i. it will enable the LPA to understand the council’s (and residents’) concerns in detail;
 - ii. it will also demonstrate the seriousness of their concerns; and
 - iii. it will give the LPA the opportunity to address the issues raised before significant costs are incurred.
- 8 The Pre-Action Protocol for Judicial Review mentioned above sets out (at paragraphs 8 to 12) what should be included in such a letter before claim and a precedent letter, which can be adapted for use by local councils and residents, is also included (at Annex A). A copy of the Protocol may be found on the following internet link:
[Pre-Action Protocol for Judicial Review](#)

Costs

- 9 Local councils (and residents) will need to consider the costs implications of a Judicial Review very carefully before commencing proceedings. Even the Letter Before Claim could attract costs consequences if the matter is subsequently dropped.

Time Limits

- 10 The need to act promptly should not be underestimated. The 3 month limit is a cut off point but applications made within 3 months may not pass the permission stage if they have not been made promptly.

Other Sources of advice

- 11 NALC is always happy to provide “desk top” advice on a range of legal issues but is unable to act for councils in respect of any litigation including Judicial Review claims. Councils considering Judicial Review claims will need to obtain independent legal advice. Additionally, they may wish to avail themselves of the services of an organisation called “Planning Aid” which gives free and independent legal advice. Planning Aid runs a useful website which may be accessed via the following link:
<http://www.planningaid.rtpi.org.uk/>

- 12 The Planning Portal is the Government’s online resource for information and guidance on planning and the building regulations.
- 13 In partnership with every Local Planning Authority (LPA) in England and Wales, the Planning Portal is working to streamline planning services, making them simpler, faster and easier to use.
- 14 The Planning Portal has an interactive planning application process.
- 15 The Planning Portal is a focal point for all planning and building regulations information, guidance and policy. If members of the public, planning professionals, government users, or statutory consultees need to find out anything about planning or building regulations, this should be the first port of call. The Planning Portal can be accessed via the following link
<http://www.planningportal.gov.uk>

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
15	Legal Proceedings	Sets out the law in respect of Judicial Review in more detail.
59	The rights of local councils to be notified of planning applications and decisions	Details power of local councils to make representations in respect of planning applications in their area.
61	Status of Parish, Town and Community Councils at Public Inquiries	Details involvement of local councils at planning inquiries.
62	Planning Control over Agricultural Land and Buildings	Details when planning permission may be exempt.
63	Planning & Building Control Enforcement	Sets out the powers of local authorities to take enforcement action in respect of planning breaches.
83	Neighbourhood Planning	Sets out the procedure for obtaining a Neighbourhood Development Plan or Neighbourhood Development Order.

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