



## Judicial review

Judicial review is the legal process by which you may challenge the lawfulness of a decision by a public authority that impacts on you or your interests. This section of Planning Help, produced jointly by CPRE and the Environmental Law Foundation (ELF), looks at the scope for judicial review in relation to land use planning. It will help you decide whether you have a case and sets out how the procedure works.

**You are strongly recommended to seek legal advice before making an application for judicial review. ELF can help find legal expertise, including a free initial consultation to evaluate your case. Contact ELF by using the details on the back of this guide.**

Judicial review is exercised by High Court judges under the Civil Procedure Rules, Part 54 and applies to:

- decisions by public authorities. This includes local planning authorities, Planning Inspectors, the Secretary of State and statutory agencies such as the Environment Agency, English Heritage and Natural England;
- decisions by domestic tribunals and certain courts (e.g. the Magistrates Court);
- decisions by Parliament if contradictory to European Union Law or Convention (e.g. the European Convention on Human Rights);
- the legality of subordinate regulations and rules, which includes statutory instruments.

Judicial review cannot be used for decisions made by the Crown Court (in most circumstances), the High Court, the Court of Appeal or the House of Lords.

In judicial review proceedings the court will intervene as a matter of discretion to: (a) either quash, prevent, or require a decision, (b) clarify the law or, (c) to compensate the applicant.

The court cannot rule on the policy merits of a decision, only in order to right a recognisable public wrong.

In most planning cases (e.g. an application for planning permission for development) there are generally only two parties involved; the developer making the application and the local planning authority (LPA) deciding whether or not to grant planning permission. Most communities and individuals that live close to the proposed development are regarded as third parties and do not usually have a right to appeal any planning decision taken by a local authority.

Since there is no right of appeal for third parties on planning decisions in the UK, judicial review provides the only opportunity for further action once a decision to approve development has been made by a local authority. However, it can only consider the

lawfulness of a decision and test whether it was legally right or wrong. The best outcome is that a bad decision will be quashed and returned to the relevant authority who must then make a fresh decision. The same decision may be made by the LPA again as long as it is then made lawfully.

The law differs where the challenge is to a decision made by an Inspector upon an appeal by the applicant for development or by the Secretary of State following a call-in.

In those circumstances, there is a requirement to bring statutory review proceedings under section 288 of the Town and Country Planning Act 1990 (TCPA).

### **Time Limits**

Strict time limits apply to both statutory reviews and judicial review. Under section 288 of TCPA 1990, applications for review must be made within six weeks of the date of the decision.

This time limit is strict and it appears that the Court has no discretion to extend the time limit.

For judicial review the CPR, Part 54 allows for proceedings to be brought within three months from the 'date when the grounds for the application first arose.' However, there is also a duty to apply promptly.

In planning cases the combination of these rules has been taken to mean that a six week rule applied in all planning cases. However, in the case of *Burkett* [\[1\]](#) the House of Lords ruled that such a rule was a 'misconception'. In planning matters the correct date for decisions was when the planning permission was granted and not any other date, including the date of a resolution of the local planning authority to grant outline planning permission.

In judicial review although there is a requirement for promptness the Court does have discretion to extend the time limit.

### **What are the issues involved in judicial review?**

Any person or group may make an application for judicial review providing that they have sufficient interest or 'cause' in the matter. But Judicial review is not an easy option. It usually requires expert knowledge of the law and can incur considerable costs. Judicial review is considered a remedy of last resort and therefore you must show that there is no other alternative remedy.

If you are thinking of using judicial review to challenge a decision you should make yourself fully aware of the risks and uncertainties, and whether you are willing to take these in. In particular, there is a possibility of incurring substantial financial costs. At the outset you should also establish whether:

- you have adequate cause;
- you have a provable case;
- you are confident that the authority's decision was unlawful;
- you are confident that the authority's decision did not follow the correct procedure; and
- the decision was (i) rational; (ii) violating human rights legislation; or (iii) in accordance with European Union law.

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[1] R v Hammersmith & Fulham LBC, ex parte Robert Burkett and Sonia Burkett (2002) 3 ALL ER 97

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