

Environmental Judicial Review

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Key themes



- Procedural changes
- Recent trends in planning challenges
- SEA and Habitats challenges
- Challenges to infrastructure projects

Procedural changes: time limit



- Six week time limit in "Planning Act" challenges from 1 July 2013
- See *Finn-Kelcey v Milton Keynes* on the previous treatment of "promptness" and the *Uniplex* dilemma in *Berky*
- Query whether promptness requirement remains
- Brings in to line with s 288 TCPA 1990 (statutory appeal); s 118 Planning Act 2008 (JR); s 113 PCPA 2004 (JR)

Procedural changes: time limit (2)



- Note addition to paragraph 6 of the pre-action protocol: “the parties should still attempt to comply with this protocol but the court will not apply normal cost sanctions where the court is satisfied that it has not been possible to comply because of the shorter time limits”
- Note also in any event paragraph 6 states that “This protocol will not be appropriate where the defendant does not have the legal power to change the decision being challenged”



Procedural changes



- Removal of right to oral renewal in “totally without merit” JR applications (new CPR 54.12(7))
 - Took effect on 1 July 2013
 - Importance of getting the pleadings right
 - Query whether Article 6 challenges may arise



Costs



- New rules on costs limits in “Aarhus Convention claims”: Part VII of CPR 45
- ‘Aarhus Convention claim’ means a claim for judicial review of a decision, act or omission all or part of which is subject to the provisions of [Aarhus Convention] including a claim which proceeds on the basis that the decision, act or omission, or part of it, is so subject (CPR 45.41)
- Potentially broad range of cases
- CPR 45.42 allows for “opt out” by Claimant



Costs (2)



- CPR 45.43 provides for a limit to be prescribed in the Practice Direction, which may prescribe different amounts for different “nature of claimant”
- Current limit is £5,000 where “claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person” and £10,000 in all other cases
- Reciprocal cap is £35,000

Costs (3)



- CPR 45.44 allows for challenge to whether an Aarhus claim
- If Court finds *not* an Aarhus claim, no order as to costs
- If Court finds it is an Aarhus claim, D pays C’s costs on the indemnity basis

Recent trends in planning challenges



- The fall-out of *Tesco v Dundee*
 - Interpretation of NPPF
 - What is for the Court and what is for the decision maker?
- Application of NPPF and “localism”
 - See *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin)
 - *Wainhomes (South West) v SSCLG* [2013] EWHC 597 (Admin)

SEA: challenges to policy



- Means of stopping the proposal before it is consented
- *Heard v Broadland DC* [2012] EWHC 344 (Admin)
- *R (Wakil) v Hammersmith & Fulham* [2013] Env LR 3
- *R (Buckinghamshire CC & others) v Secretary of State for Transport* [2013] EWHC 481 (Admin)



Habitats & protected species



- *R (Prideaux) v Buckinghamshire CC* [2013] EWHC 1054 (Admin)
 - Approach to alternatives and protected species
- *Forest of Dean Friends of the Earth v Forest of Dean DC* [2013] EWHC 1567 (Admin)
- *Champion v North Norfolk DC* [2013] EWHC 1065 (Admin)
- *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin)



Discussion: tactics



- Costs
- Timing
- Whether to challenge the plan or the project (or both)


