Landmark Chambers

Challenging a neighbourhood plan and when to do so

James Neill

The three targets for legal challenge in the NP process under section 61N TCPA

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- **Stage 1**: LPA's consideration of an examiner's recommendations (or exercise of intervention powers by S of S)
- **Stage 2**: "Anything relating to a referendum"
- **Stage 3**: LPA's making of the plan after the referendum

"61N. –

(1) A court may entertain proceedings for questioning a decision to act under [section 38A(4) or (6) of the 2004 Act] only if –

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.

(2) A court may entertain proceedings for questioning a decision under paragraph 12 of Schedule 4B (consideration by local planning authority of recommendations made by examiner etc) or paragraph 13B of that Schedule (intervention powers of Secretary of State) only if –

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.

(3) A court may entertain proceedings for questioning anything relating to a referendum under paragraph 14 or 15 of Schedule 4B only if –

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the result of the referendum is declared."

At what stage should a challenge be brought?

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- Claimants are not free to choose to wait until the plan is made: sections 61N(1), (2) and (3) are not entirely "permissive": Oyston Estates Ltd v Fylde BC [2019] EWCV Civ 1152**. So if a challenge is in truth challenging a Stage 1 or 2 decision, claimants cannot choose to wait and then challenge Stage 3 (the making of the plan):**

  "Subsection (2) enables, and also requires, a party aggrieved by the authority's consideration of the examiner's report and wants to test its lawfulness before the court, to bring a challenge promptly at that stage – within six weeks of the publication of the authority's decision, before the plan is put to a referendum and then proceeds beyond that." (at [39])

- Process is via judicial review, **6 weeks to bring a claim** but NB no discretion to extend time (unlike "normal" JR): Oyston at [33]

- However, if a claim is brought to a Stage 1 Decision, Claimants should seek an undertaking or interim relief stopping Stage 2 and 3: see eg Hoare v The Vale of White Horse District Council [2017] EWHC 1711 (Admin)

- Fairly residual role of section 61N(1), mainly if the plan "would breach, or would otherwise, be incompatible with any EU obligation": see section 38(A)(6) which requires that to be expressly considered at Stage 3, and eg Stonegate Homes Ltd v Horsham District Council [2017] Env LR 8.

Oyston Estates: the facts

- Consultation on submission draft: May/April 2016
- Examiner's report recommending modification: 10 August 2016
- LPA sought screening opinion, which was negative subject to project specific HRA
- LPA considered the examiner's recommendation and resolved to publish decision statement: 2 March 2017
- Referendum: 4 May 2017
- Final decision statement making the plan: 26 May 2017
- JR filed: 5 July 2017
- **HELD**: out of time to challenge the Stage 1 decision taken on 2 March 2017

What arguments can be raised in a legal challenge to a NP?

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- See Lang J's summary Lochailort at [88] – [94]: standard public law grounds - i.e misdirection in law, irrationality, failure to have regard to material considerations, procedural impropriety.

- Not a review of planning merits: exercise of planning judgment and weight are matters for the decision maker (including whether plan is in "general conformity" with the strategic policies of the adopted development plan): DLA Delivery at [23]

- Scrutiny of an examiner's report similar to that of appeal decision – should be read "without excessive legalism or exegetical sophistication" (c.f Clarke Homes v Secretary of State for the Environment (1993) 66 P & CR 263

Thank you for listening

London
180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham
4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us
clerks@landmarkchambers.co.uk
www.landmarkchambers.co.uk

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