

Judicial Review: Protective Costs Order

April 2013

Tips to reduce the risk of JR

Developers need to pay even more care to the risk of JR now that claimants are assured of fixed costs. Although, it may not be possible to prevent a claimant from issuing a claim, the more robust the planning application and decision making process, the easier it should be to persuade the Court to dismiss the claim at an early stage (i.e. the permission stage).

We set out below some suggested tips for reducing the risk of JR:

Take care with the planning application

- Make sure that the Council has sufficient information to enable it to make a decision having taken account of all material considerations.
- Consider whether a legal review of the planning application material is required, particularly if an Environmental Statement is to be submitted. ES challenges have been the bedrock of many recent JRs (over 70%).

Be careful with public consultation and make sure the committee report is legally watertight, thorough and balanced

- Check that the Council has carried out its consultation exercise properly and followed other statutory procedures. This is particularly important if changes are made to the scheme post submission.
- Discuss with the Council whether all objections have been properly and fully aired in the committee report. Consider giving a clear rebuttal from the applicant. It may be counterproductive to seek to avoid dealing with them.
- Consider whether a legal/planning review of the committee report is necessary and (if possible) highlight and provide "clarifications" in an addendum report or submission to officers.

Take care with the decision notice

Think about whether a legal review of the draft decision notice should be done before issue. Errors on the face of a decision which go to the heart of the permission allow an easy ground of challenge. Equally, conditions which are not framed lawfully or omissions of proper reasons for the decision or reference to relevant policies can be challenged.

Is the Section 106 agreement legally compliant?

Consider each of the separate obligations in the section 106 agreement to make sure that any obligations are necessary; directly related to the development and fairly and reasonably related in scale and kind to the development.¹

Watch out for third parties

You can try to reduce the risk of a third party challenges out of time by ensuring that relevant steps are taken to bring the planning decision to the attention of all relevant parties.

¹ In order to comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)