

Bruton town council 21 January 2025

Judicial Review and Brewham Road south

What is a judicial review?

- A legal challenge to an administrative decision taken by a public body
- A challenge to the way the decision has been taken, **not to the decision itself, so**
- If the challenge is successful, the public body can retake the decision (properly)
- The bar for successful challenge is high. It needs to be shown that the body acted:
 - Unlawfully, and/or
 - Unfairly, and/or
 - Irrationally and/or
 - In breach of a previous undertaking

The process and timescale (for planning cases)

- Highly legal process
- Either party may give way and stop the process at any stage up till the final hearing

The clock starts

- When the decision notice is issued (this is not the same thing as the committee making its decision, and has not yet happened for Brewham Road south)
- Strictly enforced six-week time limit for an application to be made for planning cases
- If this timescale is not met the decision stands and cannot be challenged

Stage one: letter before claim

- Optional for planning cases, but should be done if there is time
- Our legal representative sends a letter in prescribed form to the 'defendant' ie Somerset Council giving notice that a judicial review is proposed, and the legal grounds for asking for a review
- The defendant is normally given two weeks to respond. They may either
 - Concede, or
 - State that if there is an application for JR they will contest

Stage two: leave to apply (clock stops ticking)

- Our barrister must apply by midnight on the 42nd day after the decision (extension to next working day if the 42nd day is a weekend or bank holiday)
- The application sets out the case, together with paperwork evidence on which the case relies
- The court makes a decision (based on the paperwork) on whether there is an arguable case for review, and, if not, dismisses it
- If the court turns the application down our barrister may then ask to be heard in person (rather than the decision being made on the paperwork)

Stage three: application

- Lengthy process of filing claims and counter claims, potentially leading to
- Full hearing
- Very much a legal argument between barristers. Not usual for witnesses to be called.

Costs

- Barristers do not come cheap: JR is an inherently expensive and risky process
- Costs mount with each stage of the process, and particularly with a hearing
- The general rule is that whoever loses or concedes pays both sides' legal costs
 - pre-application this is done by agreement as part of a concession
 - It would be less usual for the claimant to be asked to pay the defendant's pre-application costs than vice versa, and this cannot be required
 - Post application the court can be (and usually is) asked to make a costs order
- It is possible to 'hedge' against losing post-application by seeking a 'Protective Costs Order'. This has the following effect:
 - On losing the case: we pay our own costs but only the first £10,000 of the defendant's costs
 - On winning: we can only recover the first £35,000 of our costs

Legal advice and preliminary costs

On a personal recommendation I have approached Landmark Chambers and given background details of the case. No costs have been incurred yet.

- Landmark have identified a very experienced Counsel with expertise in planning and highway law
- Landmark Chambers are one of the leading planning and environmental chambers
- This barrister is licenced to accept direct instruction (so no need for solicitor)

Availability and cost

- Would take on our case at any time after 6 January 2025
- Work to a fixed fee normally payable in advance. Based on the information I have given about the case we have been quoted:
 - Advice re prospects of success £5,000 + VAT
 - (If necessary) drafting and service of Letter Before Claim £1,500 + VAT
 - Quotes for further stages have not been obtained

Other alternatives

When I approached Landmark, I believed that the planning decision had already been taken, so there was no time to look for alternatives. It might be possible to find cheaper barristers, but the services and costs of a solicitor might be needed too.