



14 May 2021

PRESS SUMMARY

R (on the application of Fylde Coast Farms Ltd (formerly Oyston Estates Ltd)) (Appellant) v Fylde Borough Council (Respondent)
[2021] UKSC 18
On appeal from: [2019] EWCA Civ 1152

JUSTICES: Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Sales, Lord Stephens

BACKGROUND TO THE APPEAL

This appeal is about the interpretation of section 61N of the Town and Country Planning Act 1990, which sets out time limits for bringing a legal challenge in relation to neighbourhood development plans. A neighbourhood plan sets out the parameters for the grant of planning permission in a neighbourhood. The procedures for making such plans were introduced by the Localism Act 2011 (“**the 2011 Act**”). Seven consecutive steps are involved in making a neighbourhood plan. Following the making of a proposal, the fifth, sixth and seven stages of the process are the consideration of an independent examiner’s report on it, holding a local referendum, and the making of the plan itself.

A proposal for a neighbourhood plan for St Anne’s on the Sea, near Blackpool, was put forward which did not include an open site then owned by the appellant, Oyston Estates Ltd (“**Oyston**”), which it wished to develop for housing. The examiner recommended that the draft be amended to include the Oyston site. At stage 5, in its role as the local planning authority, in March 2017 Fylde Borough Council (“**the Council**”) decided not to accept that recommendation and instead referred the draft plan in unamended form to a referendum (stage 6), in which it was approved by a large majority. Accordingly, on 26 May 2017 the Council made the St Anne’s on the Sea Neighbourhood Development Plan (“**the Plan**”) in unamended form (stage 7).

By a judicial review claim commenced on 6 July 2017 Oyston challenged the making of the Plan. This would have been in time if the time limit in section 61N(1) applied but was out of time if the limit in section 61N(2) applied. The Administrative Court determined that section 61N(2) applied so the claim was out of time and the Court of Appeal upheld this decision. Oyston now appeals to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Briggs and Lord Sales give the judgment.

REASONS FOR THE JUDGMENT

Section 61N provides for time limits in respect of legal challenges relating to steps 5, 6, and 7 of the plan-making process. Section 61N(1) sets a six week time limit for challenging the final making of a neighbourhood plan (step 7). Section 61N(2) sets a six week time limit in relation to challenges to a local authority’s consideration of the examiner’s report (step 5).

Oyston’s ground of challenge to the Plan is that the Council failed without good reason to accept the amendment recommended by the examiner, i.e. at step 5. Oyston filed its claim within six weeks of the

Council making the final Plan (step 7), but outside the time limit for a challenge to step 5. The issue is whether Oyston can take advantage of the later time limit measured by reference to step 7.

The Court upholds the decision of the Court of Appeal that Oyston's legal challenge was made out of time. It rejects Oyston's argument that its claim falls within the scope of section 61N(1) and is unaffected by the time limit in section 61N(2) [5].

When interpreting a statutory provision, it is necessary to set the provision in its context and to arrive at an interpretation which gives effect to its purpose [6].

The approach to identifying the time limit for challenging an administrative action which is the outcome of a series of steps has been a longstanding point of contention in planning law [37], [55]. If the time limit runs from the date of an early step in the process which is said to be affected by unlawfulness it could be perceived as requiring premature litigation which might ultimately prove to be unnecessary and as placing a significant burden on a claimant, who would have to take prompt action at a stage when the outcome of the process is not clear. But it might be seen as dilatory and disruptive of good administration if a claimant is allowed to wait until the final decision before bringing proceedings and the time limit runs from then, since if such a challenge is successful all of the administrative steps after the unlawful one would be rendered nugatory even though it might have been possible to salvage matters without difficulty at an earlier stage [38]. The case law reflects this tension and indicates that there is no obvious resolution which must prevail nor any presumption which guides the interpretation of section 61N [40]-[41].

The Court holds that each subsection of section 61N is intended to be restrictive in its effect. Section 61N cannot be read as setting out a complete code for all challenges which might be brought in relation to neighbourhood plans. It only deals with stages 5, 6 and 7 of a seven-stage process. In principle, challenges to other stages would be available under the general law [46], [47]. The recognition in section 61N that there may be challenges in relation to stages 5, 6 and 7 of the process does not amount to the creation of new rights of challenge each with their own time limit, but is a reference to existing rights of challenge under the general law which are then made subject to specific time limits in a manner which is entirely restrictive in its effect [42], [48].

The wording of the statute supports this interpretation. The words at the start of each subsection ("*[a] court may entertain proceedings...only if*") introduce limitations to the position in general law, which is that proceedings are capable of being brought if there is unlawfulness at any stage [49].

In this case, Oyston's challenge to the Plan was based on what the Council did at stage 5, and is therefore within section 61N(2) so that the time limit in that subsection applies. Oyston's challenge to the Plan was therefore brought out of time [51].

This interpretation could lead to a scenario where multiple challenges have to be brought in relation to one overall plan-making process, albeit it is more realistic to expect that an existing claim in relation to one stage might be amended to introduce any additional challenge to a subsequent stage as the process moves forward. Either way, the claims could be managed by the courts to avoid duplication and excessive costs. In any event, this is insufficient to displace the clear restrictive meaning of each subsection within section 61N [54]. The new procedure for making neighbourhood plans was introduced by the 2011 Act with the aim of promoting public participation in local planning matters by holding referendums, and Parliament was entitled to decide that strict time limits should apply at successive stages so that the outcome of a referendum should not be set at nought by reason of technical legal arguments which could have been sorted out before it was held, since this would risk creating disaffection with the new procedure which could undermine rather than promote public engagement [55].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>