



# Planning Court Procedure and Costs Capping Orders

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# The Planning Court on the Western Circuit Where and Who?



- May lodge in Cardiff Civil Justice Centre for hearing in Bristol Civil Justice Centre (or elsewhere on the Western Circuit).
- Will be listed on the Western Circuit unless there are exceptional circumstances (ACO Wales/West Listing policy v.3.1).
- Significant Cases = High Court Judge approved to consider significant planning cases.
- Non-Significant Cases = HCJ or s.9 Judge approved to consider planning cases.



# Planning Court Claims

## CPR 54.21

**'Planning Court claim' means a judicial review or statutory challenge which involves**

- (i) planning permission, other development consents, the enforcement of planning control and the enforcement of other statutory schemes;
- (ii) applications under the Transport and Works Act 1992;
- (iii) wayleaves;
- (iv) highways and other rights of way;
- (v) compulsory purchase orders;
- (vi) village greens;
- (vii) European Union environmental legislation and domestic transpositions, including assessments for development consents, habitats, waste and pollution control;
- (viii) national, regional or other planning policy documents, statutory or otherwise; or
- (ix) any other matter the judge appointed under rule 54.22(2) [Planning Liaison Judge] considers appropriate.

## Types of Claims

Judicial Reviews within CPR 54.21 criteria (CPR 54 & PD 54A-E)

Statutory Planning Reviews (CPR 8 & PD 8C)

- section 287 of the Town and Country Planning Act 1990;
- section 288 of the Town and Country Planning Act 1990;
- section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- section 22 of the Planning (Hazardous Substances) Act 1990; and
- section 113 of the Planning and Compulsory Purchase Act 2004.

Statutory Appeals (CPR 52 & PD 52D)

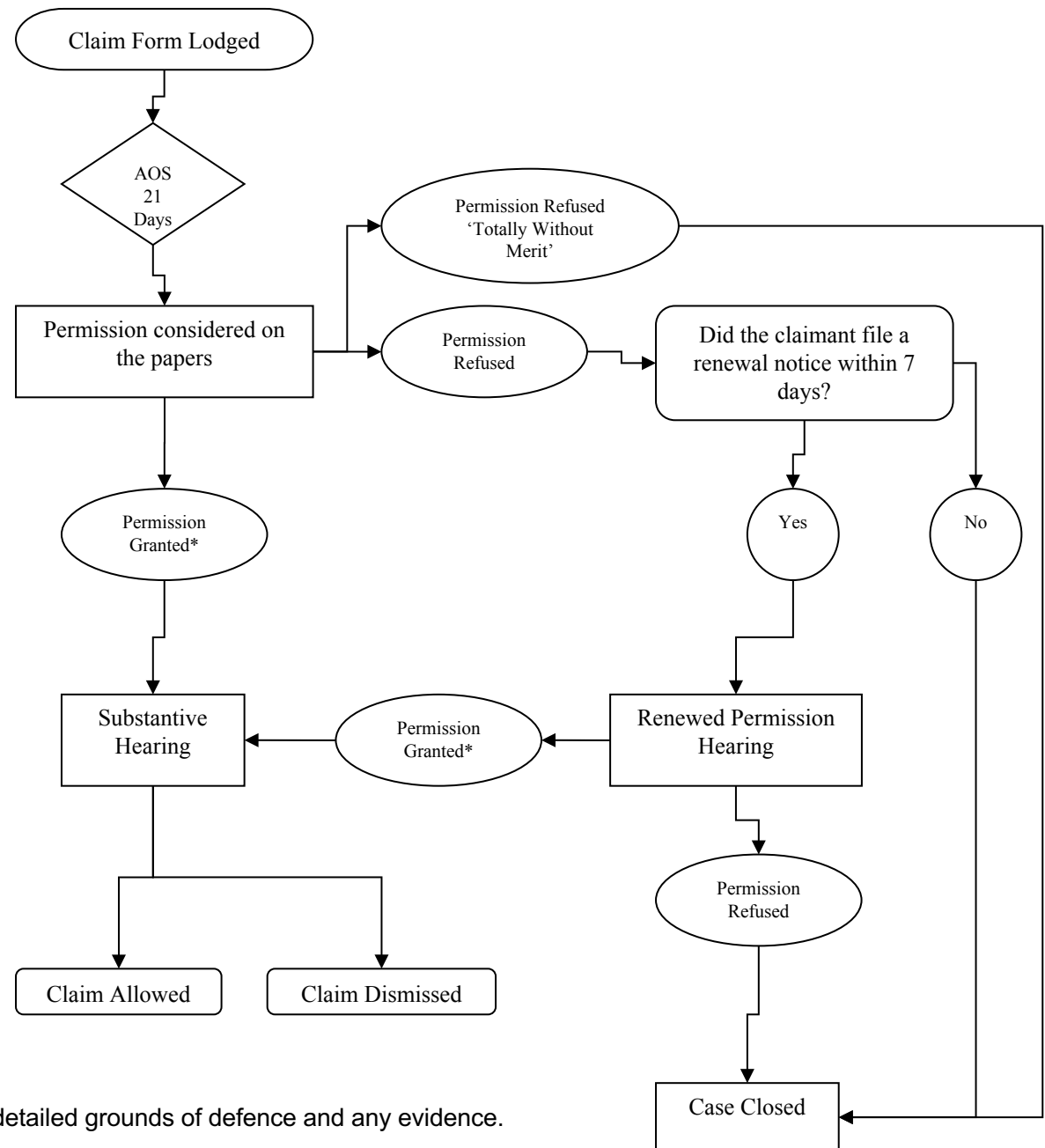
- section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990; and
- section 289 of the Town and Country Planning Act 1990.



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HM Courts &  
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# Judicial Review and Planning Statutory Review Process



\* The Defendant has 35 days in which to file detailed grounds of defence and any evidence.



# Procedural Provisions

Provision	Judicial Review	Statutory Review
Time Limit for Filing Claim Form (mostly 6 weeks)	54.5(5) or 54.5(1)	See Statute
Contents of the Judicial Review Papers	54.6	PD 8C para 2.2 - 2.4
Application for permission must be served by parties (and time limits)	54.7	PD 8C para 4.4
Any acknowledgment of service must be filed within 21 days receipt of application for permission	54.8(2)	PD 8C para 5.3(a)
Right to oral reconsideration where permission is not granted	54.12(3)	PD 8C para 7.4
Application for oral reconsideration must be filed within 7 days of service of order	54.12(4)	PD 8C para 7.5
No right to reconsideration in 'Totally Without Merit' Cases	54.12(7)	PD 8C para 7.8
Where permission has been granted, detailed response and evidence to be filed within 35 days	54.14(1)	PD 8C para 12.1
Skeleton argument contents and time limits for filing	PD 54A para 15.1 - 15.3	PD 8C para 15.1-15.3
Agreed, paginated and indexed bundle to be provided for the substantive hearing	PD 54A para 16.1 – 16.2	PD 8C para 16.1-16.2

\*\*\* Always check and be aware of time limits \*\*\*



# Significant Cases

## Significant Cases under CPR PD 54E

### What is a significant case? CPR PD 54E para 3.2

- (a) relates to commercial, residential, or other developments which have significant economic impact either at a local level or beyond their immediate locality;
- (b) raises important points of law;
- (c) generates significant public interest; or
- (d) by virtue of the volume or nature of technical material, best dealt with by judges with significant experience of handling such matters.

Designated as significant by Planning Liaison Judge – para 3.1.

### What difference does it make?

- 1) A specialist planning High Court Judge will be allocated (CPR 54.22(3))
- 2) There will be an expedited timetable (see CPR PD 54E para 3.4 for details).

## DG's Informal Indicators for Significant Cases (Not a formal, approved, or exhaustive list)

- Housing developments of 50 dwellings or more.
- Infrastructure developments e.g. town/city centre regeneration.
- Mining and quarrying (especially “fracking”).
- Wind and solar farms.
- Major utility projects (e.g. power stations).
- Transport infrastructure (e.g. rail links and airports).
- “Mega” basements.
- Cases in which the correctness of earlier High Court decisions is challenged.
- Cases raising the interpretation/construction of legislation (where misinterpretation of the law rather than misapplication is alleged).



# Costs Protection

Now 3 types of costs protection in Planning Court claims:

- 1) Judicial Review Costs Capping Orders (“JRCCO”);
- 2) Protective Costs Orders (“PCO”); and
- 3) Aarhus Costs Cap.



# Judicial Review Costs Capping Orders

## JRCCO Considerations:

### Sections 88 and 89 Criminal Justice and Courts Act 2015

- Replace PCOs in all judicial reviews for claims lodged after 8th August 2016.
- May only be granted after permission to apply for judicial review has been granted – s.88(3) CJCA 2015.
- May only be applied for by a claimant – s.88(4) CJCA 2015.
- The court may only make a JRCCO if it is satisfied that:
  - a) The proceedings are public interest proceedings (see s.88(7) CJCA 2015).
  - b) In the absence of the order, the claimant would withdraw the application for judicial review.
- See ss.88 and 89 CJCA for the host of other considerations (such as financial resources of the claimant).
- Summarised in chapter 24 of the Administrative Court Judicial Review Guide 2016.

## JRCCO Procedure:

### Sections 88 & 89 CJCA 2015, CPR 46.17, CPR PD 46 para 10

- An application for a JRCCO should normally be contained in the claim form at section 8 or it must accompany the claim form in a separate document.
- The application must be supported by evidence setting out:
  - a) Grounds for a JRCCO with reference to ss.88 & 89 CJCA 2015 provisions;
  - b) A summary of the claimant's financial resources, unless the court has dispensed with this requirement (must include significant assets, liabilities, income, expenditure and any financial support).
  - c) The costs (and disbursements) which the claimant considers the parties are likely to incur in the future conduct of the proceedings.
  - d) If the claimant is a body corporate, whether it is able to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings.
- Any resistance of JRCCO should be in the AOS.





# Protective Costs Orders

## Non-JR Planning Court Claims

### PCOs: Considerations

#### ***Corner House* [2005] EWCA Civ 192 at 74:**

1. Court must be satisfied that:
  - a) The issues raised are of general public importance;
  - b) The public interest requires that those issues should be resolved;
  - c) The applicant has no private interest in the outcome of the case;
  - d) Having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved it is fair and just to make the order;
  - e) If the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.
2. If those acting for the applicant are doing so *pro bono* this will be likely to enhance the merits of the application.
3. It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.

### PCOs: Procedure

#### ***Corner House* at 78-81 and *Buglife* [2008] EWCA Civ 1209 at 29-31**

- A PCO should be sought on the face of the initiating claim form.
- The application supported by evidence establishing the principles outlined at paragraph 74 of *Corner House*, which should include a schedule of the claimant's future costs of and incidental to the application.
- If the defendant wishes to resist, it should set out its reasons in the AOS.
- The judge will consider whether to make the PCO on the papers. The paper decision should only be revisited in exceptional circumstances
- If the judge refuses to grant the PCO and the claimant requests that the decision is reconsidered at a hearing. The hearing should be limited to an hour.
- The claimant will face liability for costs if the PCO is refused.
- The court should not set aside a PCO unless there is an exceptional reason for doing so.



# Aarhus Costs Cap

\*HOT OFF THE PRESS – Changed on 28<sup>th</sup> Feb 2017\*

## When and How Much?

### CPR 45.41-45.45

- Aarhus Costs Cap applies in JR claims if the claim comes within art.9(1),(2) or (3) of the Convention.
- Aarhus Cost Cap applies in Statutory Reviews and Statutory Appeals if the claim comes within art.9(1) or (2) (but not (3)) of the Convention.
- Where the claimant believes the claim comes within Aarhus must note in claim form.
- Where the claimant contends that the Aarhus Convention applies, unless the defendant challenges, the costs cap is automatically in place – CPR 45.43(1).
- Defendant may challenge in the AOS (see CPR 45.44), in which case the Court will determine.
- Current cap is £5,000 for an individual. In all other cases the cap is £10,000. Where a defendant is ordered to pay costs, the limit is £35,000 (CPR PD 45 para 5.1).
- Applies where the claimant is a public body (*HS2*).
- Claimant may indicate on the claim form that they wish to opt out. If does not indicate on the claim form that the Aarhus Convention applies, the claimant is taken to have opted out – CPR 45.42.

## Article 9 of the Aarhus Convention

(1) ... [A]ny person who considers that his or her **request for information** under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, [must have] access to a review procedure before a court of law or another independent and impartial body established by law... it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

(2) ... [M]embers of the public... (a) **Having a sufficient interest** or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law... requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to **challenge the substantive and procedural legality of any decision**, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention...

(3) In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, ... **members of the public** [must] have **access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.**

*NB: Provisions redacted and emphasis added to highlight the purpose of the provision.*



# Information and Guidance

## Links

Civil Procedure Rules

<http://www.justice.gov.uk/courts/procedure-rules/civil>

Forms

<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

Administrative Court Judicial Review Guide 2016

<https://www.gov.uk/government/publications/administrative-court-judicial-review-guide>

Aarhus Convention

<http://ec.europa.eu/environment/aarhus/>

## Contacts

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