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I AM A DEVELOPER APPLYING FOR PLANNING PERMISSION

By Simon Hartley

Do I need to worry about neighbours using the judicial review of permissions against me?

This was the subject of the Land Securities PLC -v- Fladgate Fielder decision early last year.

The developer argued that judicial review (JR) of permissions was not sought to overturn them but to put pressure on the developer to assist with the challenger's relocation. They sought damages, alleging abuse of process. Whilst the claim failed, the court indicated that the tort of abuse of process applied to JR.

The Court of Appeal has now confirmed that JR of planning decisions may be sought without potential civil liability. There is no general tort of malicious prosecution. Abuse of process was restricted to pre-existing case law, which involved the misuse of arrest and execution within existing proceedings.

Public interest in JR's scrutiny of public bodies' decisions was raised: it would be unfortunate if applicants could be pressured into desisting by the threat of third party claims. The Court had no issue with JR being primarily driven by commercial motives, rather than public-spiritedness.

The decision may encourage threats of JR, even with a low prospect of success, by those with mixed motives seeking to extract benefits from developers, who may be prepared to settle in order to avoid any potential delay.

However, the judgment is unlikely to cause a significant increase in successful JR. Save in exceptional circumstances, JR proceedings must be commenced within three months of grounds for review arising, and may be refused for undue delay within that period.

This, together with the need to obtain Court permission to proceed and cost, discourages JR's use to stifle development, and remains unaltered.



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