

Case Name: *Oyston Estates Ltd, R (On the Application Of) v Fylde Borough Council* [2019] EWCA Civ 1152 (05 July 2019)

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Commentary: The Court of Appeal dismissed Oyston Estates' appeal, upholding the High Court's decision that, on the proper understanding of section 61N of the Town and Country Planning Act 1990, Oyston were out of time in bringing their judicial review claim against (in effect) Fylde Borough Council's decision of 2 March 2017 to publish a decision statement in favour of making the St Anne's on The Sea Neighbourhood Development Plan (the SNDP), and for approval of the plan to proceed to a referendum.

The claim related to undeveloped land owned by Oyston at Lytham Moss, to the south of St Anne's, Lancashire, and earmarked by Oyston for housing development. Oyston promoted the site's inclusion within the SNDP's settlement boundary, but proved unsuccessful when the SNDP, following a positive referendum result on 4 May 2017, was made on 26 May 2017.

Oyston issued their claim for judicial review on 5 July 2017, challenging Fylde's decision to make the SNDP on 26 May 2017, and seeking an order to quash it. They did so under section 61N of the 1990 Act, whereby legal challenges in relation to neighbourhood development orders can be made by judicial review claim if the claim form is filed within 6 weeks of the relevant decision in the neighbourhood plan-making process. As Oyston's claim was framed as a challenge to the decision of 26 May 2017, its filing on 6 July 2017 was ostensibly in time under section 61N(1).

However, it was common ground in the High Court that the thrust of Oyston's claim went to the legality of Fylde's decision of 2 March 2017. Accordingly, Oyston argued in the High Court that their claim could properly fall under sections 61N(2) and (3), which would allow their challenge to bear on Fylde's decision of 2 March 2017. Oyston's argument was on the basis that sections 61N(2) and (3) should be construed permissively, so that a claim could be brought under those sections beyond the 6-week period from the relevant decision date that they lay down, thereby allowing as within time Oyston's claim issued on 5 July 2017 outside the relevant 6-week period.

The High Court held that Parliament decided on the 6-week claim periods within section 61N as precisely identified, being expressly intended to allow for claims to be brought only within 6 weeks of decisions at specific stages of the neighbourhood plan-making process, and not permitting late claims – in the interests of certainty, efficiency and fairness. The High Court therefore dismissed Oyston's claim issued on 5 July 2017 as brought outside the relevant 6-week period in relation to the effectively relevant decision of 2 March 2017.

The Court of Appeal upheld the High Court's interpretation of section 61N: "Not only was the judge's interpretation of section 61N correct; he also grasped the statutory purpose behind it. Nor was his interpretation hostile to good administration" (Lord Justice Lindblom, at

paragraph 47 of the Court of Appeal's judgment). Therefore the Court of Appeal dismissed Oyston's appeal.

Case summary prepared by Town Legal LLP