Case Name: *Fylde Coast Farms Ltd, R (on the application of) v Fylde Borough Council* [2021] UKSC 18 (14 May 2021)

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Commentary: This case concerned the interpretation of section 61N of the Town and Country Planning Act 1990, and whether the appellant's judicial review claim to the neighbourhood plan-making process was made out of time. Dismissing the appeal, the Supreme Court held that the challenge to the consideration of the examiner's report was out of time, and could not be deemed to relate to the final making of the neighbourhood plan.

The case revolved around the making of a neighbourhood plan for St Anne's on the Sea, pursuant to designation by the local planning authority, Fylde Borough Council ("Council"). The initial proposal excluded undeveloped land owned by Fylde Coast Farms Ltd ("appellant"). The independent examiner's report (step 4 of the plan-making process brought in under the Localism Act 2011) recommended modification to include the appellant's land. As part of their consideration of the report (step 5), the Council did not accept this modification. Under section 61N(2), the time limit for challenging the consideration under step 5 is six weeks from publication of the decision. Months later, following a local referendum strongly in favour (step 6), the neighbourhood plan was made (step 7). Under section 61N(1), the time limit for challenging the decision under step 7 is six weeks from publication of the decision. The appellant issued a judicial review within the six weeks of the step 7 decision, but well outside of the six-week period to challenge step 5.

The question for the Supreme Court was whether the final decision (step 7) can be challenged based on earlier decisions (in this case step 5), or whether challenges to earlier decisions are restricted to their own challenge period. The court recognised that this was a "longstanding point of contention in planning law" with an "obvious tension": on the one hand, requiring early challenge "could be perceived to be premature and potentially wasteful" and to place a heavy burden on the claimant to anticipate whether the decision will impact the final outcome; but on the other hand, allowing claimants to wait until the final decision "could be perceived as being dilatory, unduly disruptive of good administration and potentially wasteful in a different way".

In interpreting section 61N, the court stressed the need to set the provision in context and give effect to its purpose. It held the plain meaning of 61N was restrictive, setting a "rigid, non-extendable six week time-limit" for a challenge to each step in the process. Consequently, the claim against the step 5 decision was time-barred. The court acknowledged the criticism of this approach – that it might cause injustice to ordinary residents less aware of the processes and time limits involved – but pointed to the significant publicity involved at each stage of the plan-making process. It further stated that allowing late claims that could have been determined pre-referendum risked undermining the public engagement that referendums sought to promote.

Case summary prepared by Jed Holloway