

# Legal Proceedings Arising from Renewable Energy Applications

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# Planning Policy

Poorly designed developments with unreasonable environmental impacts should not be permitted

But sometimes

- Fine detail in policy ignored
- Procedures not followed rigorously

# Judicial Review

Court reviews the lawfulness of a decision made by a public body

Challenge to the *way* a decision was made not whether the decision is right or wrong

# Grounds for JR

Irrationality

Illegality

Impropriety

# Illegality Examples

Valid decision maker ?

Unlawfully delegating power?

Fettering discretion?

Irrelevant considerations?

# Procedural Impropriety

Fair hearing for all parties?

Bias?

Proper consultation?

Reasons given?

Legitimate expectation?

# Shipdham, Norfolk 2006

Issues:

Noise

Proximity to dwellings 430m

# Planning Conditions 11/95

- Necessary
- Relevant to planning
- Relevant to the particular development
- **Enforceable**
- **Precise**
- **Reasonable**

# Bradwell, Essex 2007

## Issues:

Errors in the noise condition

Failed to consider power generation

Failed to comply with local policy on  
visual impact

# Den Brook, Devon 2007

Issues :

Noise condition

Failed to consider power generation

Refused access to environmental data

# European EIA Directive

Article 5:

Developer must provide the data  
required to identify & assess effects of  
project on environment

# European EIA Directive

## Article 6:

The public concerned shall be given early & effective opportunities to participate in the environmental decision making process

# Milton Keynes, Bucks 2008

Issues:

Wind speed data withheld from public

Wrongly assumed energy production  
levels irrelevant

Planning cttee declined to visit particular  
viewpoints

# Parham, Suffolk

Issues:

Revision of turbine type

Failure to comply with pre-build  
conditions

Planning permission expired

# Conclusions

1. Ensure you get all environmental data
2. Check that assertions based on that data are correct
3. Get tight, enforceable conditions
4. Ensure they are complied with
5. Each legal action helps others down the line.