

Your Rights in Planning Decisions: A Guide



The Environmental Law Foundation (E.L.F.) is the leading organisation providing free initial legal advice to those with environmental concerns. Founded in 1992 it has pioneered access to environmental justice by establishing a network of legal and technical advisers who provide initial advice and representation for free to potential litigants.

E.L.F. assists vulnerable communities by raising awareness of their rights and how the law can be used to address local environmental concerns.

For advice, contact: info@elflaw.org or call **0207 404 1030**
For information about projects, contact: scp@elflaw.org



Your rights in Planning Decisions: A Guide

1. Introducing environmental rights	2-3
2. A healthy environment – who decides	4-5
3. Getting information on the environment	6-8
• Specific rights to see information	6
• General rights to see information	7-8
4. Making your voice heard – your rights	9-16
• Plans and policies: your rights	9-10
• Rights for minorities	10-13
• Major structural developments: your rights	14
• Applications for planning permission: your rights	15
• Planning inquiries	15-16
5. Rights to justice	17-18
• Your right to take legal action	17-18
6. Appendices	19-22
7. Organisations to Contact	23-25

Published October 2010

Funded by the Equality and Human Rights Commission
*Produced by the Environmental Law Foundation and written
 by Robert McCracken and Cain Ormondroyd of Francis
 Taylor Building, Temple, London EC4Y 7BY*



Francis Taylor Building

1. INTRODUCING ENVIRONMENTAL RIGHTS

This Guide is here to help you understand and use your environmental rights.

Not everyone has heard of the European Convention on Human Rights and the Human Rights Act, which makes it apply in British courts. But they are important. Your human rights include the right to respect for your home¹ – this means you have a right not to suffer serious interference to your home or private life as a result of environmental harm such as polluting factories or noisy environments.

Also important are rights provided to citizens by the less well-known Aarhus Convention². This links environmental rights and human rights. It means that the public has specific rights associated with environmental decisions: the right to access information on the environment, the right to

¹ See E.L.F. Briefing: Understanding Your Right to a Healthy Environment, 2010. Certain rights set out in the European Convention on Human Rights www.echr.coe.int/echr have a bearing upon the environment: Article 2, right to life; Article 6, access to court and fair trial; Article 8, right to respect for private and family life (see Appendix).

² The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention, was signed on June 25, 1998 in the Danish city of Aarhus. The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice in governmental decision-making processes on matters concerning the local, national and transboundary environment. It focuses on interactions between the public and public authorities. On 24 February 2005 the UK ratified the Convention.

participate in decision making about the environment, and the right to have access to the courts on environmental matters.

This Guide is to help you stand up for your right to protect your environment. It shows you how you can best use your rights to get involved with decisions that could affect you.



Ward's Corner Community Coalition, July 2009 (see page 11)

2. A HEALTHY ENVIRONMENT – WHO DECIDES

Decisions affecting your environment are made by lots of different people. Often companies and individuals need approval from the government or from a local authority before they can take action.

A very important example of this is the planning system. Permission needs to be granted before new buildings can be built, before land or buildings can be used for a new purpose or before open spaces can be built upon. For example, if someone wanted to build houses on a school playing field or to use a piece of land for racing quad bikes every weekend, then they would need planning permission. Changes in how an activity is carried out might also require planning permission. For example, if the owner who had planning permission then wanted to race more or noisier quad bikes, he might need to get permission for that. These decisions are taken in the light of strategic plans written by local authorities and the government.

The planning system³ is just one example, and it is the main focus of this Guide. However, there are many other controls which can be used to defend your right to a clean environment, for example:

³ The government has a website, Planning Portal, which helps you to learn about planning and building regulations, apply for planning permission, appeal against decisions and find out about developments near you: www.planningportal.gov.uk.

Environmental Permits

These are required for certain industrial facilities which cause pollution or which deal with waste disposal or recycling. They must be obtained either from the local council or from the Environment Agency.

Statutory nuisance

The law on statutory nuisance means that councils have to take action to stop activities from causing damage to your health or unreasonably interfering with your comfort because of noise, dust, smells or artificial light, for example.

The first step in standing up for your rights is to find out who is making the decisions that can affect you.



3. GETTING INFORMATION ON THE ENVIRONMENT

Knowledge is power.

If you want to stand up for your environmental rights, you need to be armed with the relevant information. The European Court of Human Rights has said that the right to information is one element of your human rights when it comes to the environment.

Of course you will already have local knowledge about environmental problems. But public bodies have lots of relevant information too. For example, if you are worried about the noise caused by a bar which opens late, the council might have records of other complaints that have been made about the same bar.

Specific rights to see information

In many cases, councils have a specific duty to make information publicly available – so you have a right to see it. For example, applications for planning permission, along with the supporting information that has been provided, have to be available to view at the council's offices. There will often be a further requirement for consultation before a decision is made, which means that information will have to be provided.

General rights to see information

More generally, public officers should be helpful to you in finding out any other information that you need. However, if you feel you are not getting the whole picture, or if the authorities are being obstructive, then you have a right to demand information from them.

Under the Freedom of Information Act⁴, you have a general right to be able to see information held by a public body. However, you have a better right to see 'environmental information' under the Environmental Information Regulations⁵. If you request environmental information from a public authority then they have a duty to supply it, subject to certain exceptions. Information need not be disclosed, if it is not in the public interest to disclose it and its disclosure would adversely affect various interests, as set out in the Regulations, e.g. national security or the course of justice. The authority can also make a 'reasonable' charge for supplying the information.

You can appeal against a refusal to disclose information to an independent tribunal.

The key here is to make the request as early as possible, and to refer to the Regulations (e.g. 'please treat this email as a request for environmental information under the Environmental Information Regulations 2004'). The

⁴ Freedom of Information Act 2000

⁵ Environmental Information Regulations (S.I. 2004/3391)

request does not, under the Environmental Information Regulations, have to be in writing but of course it is helpful to everyone if it is. Although the public authority only has 20 days to respond, the process can take time, particularly if you are asked to be more specific, or the public authority needs more time to collate the information, or if you have to appeal. It also helps if you make the request as specific and detailed as possible (e.g. 'all meeting minutes and emails relating to x development from between y and z dates'). This will mean that the authority has less excuse to refuse your request. Do remember, however, that under the Environmental Information Regulations the authority has a duty to advise and assist you in narrowing the request if it thinks it is too broad.



4. MAKING YOUR VOICE HEARD – YOUR RIGHTS

Finding out who is making the decision and what information they have are just the first steps. You have further rights to take part in decisions that affect you. This section looks at what those rights are and how you can use them. It takes the example of the planning system. However, the same general considerations will apply to other sorts of environmental issue.

Plans and policies : your rights

You have a right to be involved when the government or your local council is making decisions that will affect you. At the moment, general government policy on planning is made nationally. It is then applied locally in the Local Development Framework. These levels of policy are supposed to be consistent with each other.

The most important level of planning policy for local communities is the local level, as this is the most accessible and directly relevant. You can check your local council's website to see what progress has been made with the Local Development Framework and what parts of it are currently being made or reviewed.

You can find out what your rights are to be involved by looking at the council's 'Statement of Community Involvement', which should be available on the council's website. The council is legally obliged to follow this document when it is deciding on planning policies. It sets out when the public needs to be consulted, and on what policies.

Generally, you have a right to make your views known at several stages: first, when the ‘issues and options’ available are considered; then, when a draft set of policies are written. Finally, the council’s policies will be sent to an independent inspector who will hold a public hearing to examine the policies and levels of public consultation. You can get involved in this too. It is obviously better though to use your right to be involved early on in the process when all the options are open.

Rights for minorities

Human rights exist for everyone and they include the right not to be discriminated against when it comes to exercising those rights. If you are from an ethnic minority community there are additional rights that protect you from planning decisions that may discriminate against you.

You may feel that planning decisions local to your area are discriminatory – they may have a negative effect on certain sectors of society, for example Black, Asian & Minority Ethnic (BAME) communities. Perhaps they increase levels of noise pollution or air pollution. Anti-discrimination legislation gives citizens grounds to resist such decisions.

Equality Impact Assessment is a process that requires public bodies such as your local planning authority to take minority and disadvantaged groups into account when they make decisions.

Local councils have a legal duty to take into account the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between different

racial groups because of the Race Relations Act 1976. They have to prepare a Race Equality Scheme, setting out how they will do this. However, if the council is not paying proper attention to racial equality, you could challenge it to carry out a race equality assessment of its proposed plan and to justify its decisions against alternatives which might be better for racial equality.

CASE STUDY: Ward's Corner

In June 2010, there was a case in Haringey where a local council failed to pay due regard to its duty to promote good race relations and equality of opportunity. The local authority planned to redevelop a prominent site known as Ward's Corner, which includes an indoor market and several local businesses, above Seven Sisters tube station. 97% of the traders and residents were from Black, Asian & Minority Ethnic, and some of the local businesses had been trading for as much as 30 years. The predominantly Latin American market had become a community space for many local people and the wider Latin American community in London. Haringey Borough Council in partnership with Grainger plc planned to develop the site into expensive apartments and a shopping complex with no provision for social housing. In an action which went all the way to the Court of Appeal, local resident Janet Harris challenged the council for its failure to pay regard to the need for good race relations and equality of opportunity. In a historic decision, the court decided that these factors had not been considered. So the development could not go ahead until they had been.

CASE STUDY: Pendle

In Pendle, the Borough Council proposed to build a waste transfer station in an area where 13.4% of the population were of Pakistani heritage; some could only speak Urdu but letters explaining the proposal were sent in English. The Environmental Law Foundation wrote to the council on behalf of a local resident raising this point and asking if the council's policies had been subject to a racial equality impact assessment. A flood risk assessment was also lacking and this point was raised. Following this letter, the application was actually withdrawn.

The examples above have focused on race, but there are similar duties in relation to those with disabilities (under the Disability Discrimination Act 1995) and in relation to gender equality (under the Sex Discrimination Act 1975).

The new Equality Act 2010 harmonises these rights into a single overarching piece of legislation.⁶

⁶ The main implementation stage of the Equality Act 2010 went ahead on 1 October 2010.

CASE STUDY: The Example of Green Space

It is well known that the presence of usable green space brings considerable benefits to communities. Research by the Centre for Architecture and Built Environment (CABE) exposed the massive inequalities in green space between different neighbourhoods. If you live in a deprived inner city, you have access to five times fewer public parks or good quality green spaces than people living in more affluent areas⁷; in areas where 40% of residents or more are Black, Asian & Minority Ethnic, there is eleven times less green space than in areas where residents are largely white⁸. Equalities legislation gives citizens the power to influence local authorities' plans for new areas of green space and to make sure that everyone benefits equally.



⁷ Urban green nation: building the evidence base, Centre for Architecture and Built Environment, 2010 www.cabeurl.com/cf

⁸ ibid

Major structural developments: your rights

Decisions on major structural developments like railways, power stations and airports are made by a special government body. Under the Labour government (1997-2010), this was the Infrastructure Planning Commission but the Coalition government is set to abolish it. The government has said it will be replaced with a new 'Major Infrastructure Planning Unit', part of the Planning Inspectorate. Your right to get involved in its decisions are limited – there is only a very limited role for public hearings. Most of your contribution must be in writing. This means that your rights to contribute early on are even more important.

The government is writing a special set of plans, called National Policy Statements, which deal with these developments. These will be very important as they will decide the need for the projects and may determine the exact location for their development. If you know of proposals like this in your area then you should make sure your views are fully known as early as possible during any periods of consultation (both while the policy is still being framed by the government and afterwards when proposals for particular projects are put forward). Once it has been written it may well be much harder to object when a specific proposal for development is made.

Applications for planning permission : your rights

As mentioned above, you have specific rights to see environmental information when someone has made an application for planning permission (and there are similar rights relating to other sorts of application). If the development proposed is likely to have significant effects on the environment, this information should include an environmental statement providing information about those effects. You have a right to be consulted on this information, for it to be made accessible to you at reasonable cost, and for a summary of the environmental information to be made available.

Many planning applications are taken in committees and you may be able to attend the committee meeting at which the decision is taken and make oral representations; if so, your right to speak at the meeting will probably be limited so it is best also to put your objections in writing.

Planning inquiries

In certain situations (such as an appeal by the developer of a plan or a call-in by the Secretary of State of a planning decision) a planning inspector may hold an informal hearing or public inquiry to decide on the application. The public is entitled to attend and participate in that process subject to any limitations placed on representations by the Inspector. Before attending such an inquiry, it may be best to take advice from a planning lawyer, the Environmental Law Foundation or another planning professional.

Applications for planning permission attract the most interest and public participation. Often, however, this is not the most effective point at which to contribute, as some considerations might already have been concluded during the plan preparation stage. As is clear from this section, you have a broad range of rights to get involved in decision making, and the best way to stand up for your right to protect or improve your environment is to make use of all of them.

CASE STUDY: Cambrian Mountains

In 2008, the Environmental Law Foundation provided assistance to a group who were concerned about the impact of proposals for motorised vehicles in the Cambrian Mountains. This is an area containing a number of priority habitats and more than fifty Sites of Special Scientific Interest as well as Special Areas of Conservation. The council was proposing to create three new sites for off-road vehicles. An E.L.F. solicitor reviewed the case and considered that a Sustainability Appraisal pursuant to the Strategic Environmental Assessment Directive⁹ should have been carried out of the plan. When he wrote to the Council about this, they promptly withdrew the application.

⁹ A Strategic Environmental Assessment (EU Directive 2001/42/EC) is a report in which the likely significant effects on the environment and the reasonable alternatives of a proposed plan or programme are identified.

5. RIGHTS TO JUSTICE

If you are unhappy with an environmental decision you may have a range of remedies available to you. One is to challenge the decision in the courts. The Aarhus Convention says you have a right to access the courts to do this.

The Aarhus Convention states that members of the public should have access to the courts or tribunals to challenge acts and omissions of both private and public authorities and that access must be fair, equitable, timely and not prohibitively expensive (Article 9).

Other remedies may include complaining to the local government Ombudsman or, where there is a breach of your human rights, to complain to the Equality and Human Rights Commission¹⁰ who may investigate your claim or bring a case on your behalf.

Your right to take legal action

If you disagree with a decision that a local authority has taken and are advised that the decision taken is unlawful, you may be able to take proceedings in the High Court against the public body and get the decision overturned. For this route to succeed however there must have been some legal error

¹⁰ Equality and Human Rights Commission <http://www.equalityhumanrights.com>
The EHRC came into being in October 2007; it has responsibility for promoting and enforcing all non-discrimination laws in Britain.

on the part of the decision maker or an interference with your human rights that is unjustified and not proportionate.

If you do want to challenge a decision then it is important that you obtain immediate legal advice from a lawyer or an advice service such as the Environmental Law Foundation.

You may also wish to download our Guide to Judicial Review in Planning published together with the Campaign to Protect Rural England¹¹.



¹¹ *Plan B: How to challenge bad development in Court*, Environmental Law Foundation and the Campaign to Protect Rural England, 2010. <http://www.elflaw.org/wp-content/themes/elftemplate/media/humanrightsandtheenvironment.pdf>

6. APPENDICES:

The following rights, as set out in the European Declaration of Human Rights, have a bearing upon the environment:
<http://www.echr.coe.int>

Article 2: Right to Life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 6: Access to Court and Fair Trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the

interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Protocol 1, Article 1: Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

1. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The Environmental Law Foundation

(www.elflaw.org): E.L.F.'s Advice and Referral Service deals with enquiries from members of the public with environmental concerns and refers their cases for free initial advice to its network of advisers made up of solicitors, barristers and technical consultants across the UK.

It also provides a network of regional volunteers who work closely with community groups on local environmental issues by holding awareness raising events.

Phone: 020 7404 1030

Equality and Human Rights Commission

(www.equalityhumanrights.com): is a statutory body that has the responsibility to protect, enforce and promote equality across the seven “protected” grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

One of their key roles is to provide advice and guidance on rights, responsibilities and good practice, based on equality law and human rights.

Phone: 0845 604 6610 (England)

7. ORGANISATIONS TO CONTACT:

Age UK (www.ageuk.org.uk): gives free information and advice for the elderly about a variety of issues: benefits, care, age discrimination and others.

Phone: 0800 169 6565

Bar Pro Bono Unit (www.barprobono.org.uk): acts as a clearing house, matching barristers prepared to undertake pro bono work with those who need their help.

Phone: 020 7092 3960

Black Environment Network (www.ben-network.org.uk): promotes equal opportunities with respect to all ethnic communities in the preservation, protection and development of the environment.

Phone: 020 7921 4339

Citizens Advice Bureaus (www.adviceguide.org.uk): are independent charities that give free, confidential information and advice to citizens. There are over 3,000 Citizens Advice Bureaus in England and Wales.

Phone: 020 7833 2181

Disability Alliance (www.disabilityalliance.org): works to relieve the poverty and improve the living standards of disabled people.

Phone: 020 7247 9342

Friends of the Earth (www.foe.co.uk): is an international environment NGO, which offers help in a wide range of areas. Free advice line operates 6.30pm-8.30pm every Wednesday.

Phone: 020 7490 1555

Green Space (www.green-space.org.uk): is a registered charity that works to improve parks and green spaces by raising awareness, involving communities and creating skilled professionals.

Phone: 0118 946 9060

National Flood Forum (www.floodforum.org.uk): provides support and advice to communities and individuals that have been flooded or are at risk of flooding. It is a collective, authoritative voice that aims to influence central and local government and all agencies that manage flood risk.

Phone: 01299 403 055

Noise Abatement Society (www.noiseabatementociety.com): offers advice and information on matters concerned with noise – from noisy neighbours to industrial noise safety levels, from train horns to late night lawn mowing.

Phone: 01273 823 850

Law Centres (www.lawcentres.org.uk): are not-for-profit legal practices providing free legal advice and representation to disadvantaged people.

Phone: 0845 345 4345

Law Society of England and Wales (www.lawsociety.org): gives guidance to common legal problems by law category.

Phone: 020 7242 1222

Law Works (www.lawworks.org.uk): is a pro bono group which aims to increase delivery of free legal advice to individuals and communities in need.

Phone: 020 7092 3940

Liberty (www.liberty-human-rights.org.uk): is an independent human rights organisation which works to defend and extends rights and freedoms in England and Wales.

Phone: 020 7403 3888

Planning Aid (www.rtpi.org.uk/planningaid): advises on town planning, in particular to disadvantaged communities.

Phone: 0121 214 2900

Planning Aid for London (www.planningaidforlondon.org.uk): provides advice on the telephone on housing, employment, transport, community issues, and improvement to local area.

Phone: 020 7247 4900

Planning Help (www.planninghelp.org.uk/home): is a project of the Campaign to Protect Rural England which helps citizens to influence planning decisions that shape England's towns and countryside.

Phone: 020 7981 2800

Public Law Project (www.publiclawproject.org.uk): improves legal remedies for disadvantaged communities i.e poverty, discrimination etc.

Phone: 020 7697 2190

Women's Environment Network

(www.wen.org.uk/about-wen): raises awareness on issues of women and the environment, especially those concerning women's health and reproductive systems.

Phone: 0207 481 9004



Environmental Law Foundation

Charity No 1045918

© Environmental Law Foundation

Alternative formats of this are available on request. To
make a request, please contact
020 7404 1030 or admin@elflaw.org



Environmental
Law Foundation

Environmental Law Foundation

2-10 Princeton Street, WC1R 4HB London

General Tel: 020 7404 1030 **Fax:** 020 7404 1032

Email: info@elflaw.org **Website:** www.elflaw.org