



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Briefing: Objecting to Applications for Planning permission

Please note that this briefing is written in plain English and is not meant to be legal advice. We provide information on human rights but other laws, rules and more up-to-date information may apply. We recommend that you seek further advice.

Introduction

This briefing sets out which human rights apply when looking at planning proposals. It explains how the European Court of Human Rights has dealt with cases involving planning decisions or nuisance.¹

The Planning Service is responsible for giving permission for building developments. All applications are advertised on their website and in the local press. If you own (or live in) a neighbouring property, you will also be told about the plans. If you will be affected by a proposal, you have the right to make your views known to the Planning Service.

Many people who object to planning applications make complaints about loss of sun and daylight, privacy, noise, disturbance and smells. These complaints fall under the protection of article 8 and article 1 of protocol 1 of the European Convention on Human Rights (ECHR).

The Court in Northern Ireland has commented on the Planning Service's contact with people who have lodged objections, saying:

[Planning Service] is under a duty to deal with applications for planning permission in accordance with the requirements of procedural fairness. This duty extends to objectors and may require [the Planning Service] to provide objectors with an opportunity to make additional representations.²

Where significant changes are made to a planning application, the planning authority may have to give you the opportunity to make further comment.

¹ For more information on nuisance, you should read our briefing paper on Waste, Pollution and Noise Nuisance.

² Rowsome's Application [2004] NI 82

The Human Rights Act, 1998

The Human Rights Act 1998 (HRA) brings most of the rights of the ECHR into domestic law. This means that you can directly rely on ECHR rights in the local Courts.

Article 8 ECHR provides that everyone has the right to respect for his/her private and family life. The text of article 8 reads:

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.

The Court of Appeal has accepted that article 8 may be engaged if a person is “particularly badly” affected by a planning decision.³

Article 1 of Protocol 1 ECHR covers the protection of property and the peaceful enjoyment of possessions. The text of article 1 reads:

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. 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.
2. 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.

Your rights under both article 8 and article 1 of protocol 1 are not absolute. This means that restrictions may be placed on both rights. However, any restrictions must be lawful, have a legitimate aim and be balanced. In the case of *Huang v. Secretary of State*, the House of Lords stated that the overarching approach is:

the need to balance the interests of society with those of individuals and groups. This is indeed an aspect which should never be overlooked or discounted.⁴

³ Re Stewart's Application [2003] NI 149, para 26

⁴ Huang v. Secretary of State for the Home Department [2007] UKHL 11, para 19

In the case of *Pine Valley Development Limited and Others v. Ireland*, the European Court of Human Rights (ECt.HR) decided that a restriction on the right to peaceful enjoyment of property was a legitimate aim "in accordance with the general interest" under article 1 of protocol 1.⁵

European cases

The ECt.HR has found breaches of human rights in a number of cases of industrial pollution⁶ and adverse effects on the environment.⁷ A common feature in these cases was that the pollution was significant and long term. The local authorities' failed to take any action to deal with the pollution leading to breaches of the individuals human rights.

For example, in the case of *Giacomelli v. Italy*⁸ the applicant complained about the harmful emissions from a plant treating hazardous waste. Although the Italian courts had ordered the plant to close, it continued to operate. The ECt.HR found a breach of article 8 given the dangerous activities over several years.

Noise nuisance has also been considered by the ECt.HR, with breaches of article 8 for excessive industrial noise⁹ and unregulated traffic.¹⁰

In the case of *Mileva and Others v. Bulgaria*,¹¹ the applicants complained about the excessive noise caused by an office, electronic games and computer club in the next door apartment. The local authorities had ordered the noise to stop twice but took no further action. The ECt.HR found a breach of article 8 because of the excessive noise and disturbance over four years.

In the case of *Moreno Gomez v. Spain*,¹² the applicant complained of noise caused by nightclubs over several years, which stopped her sleeping. The local authorities' had failed to take any action to deal with the noise, which was above permitted levels. The ECt.HR decided this was a breach of the applicant's article 8 rights.

⁵ *Pine Valley Development Ltd and Others v. Ireland* [1991] ECHR 55, paras 54-7

⁶ *Fadeyeva v. Russia* [2005] ECHR 376

⁷ *Tatar v. Romania*, Application 657021/01, 27 January 2009

⁸ *Giacomelli v. Italy* [2006] ECHR 916

⁹ *Dubetska and Others v. Ukraine* [2011] ECHR 256

¹⁰ *Deés v. Hungary* [2010] ECHR 1772

¹¹ *Mileva and Others v. Bulgaria* [2010] ECHR 1834

¹² *Moreno Gomez v. Spain* [2004] ECHR 633

In cases against the UK and France, the ECt.HR has not found violations of article 8 or article 1, protocol 1 in respect of airport noise.¹³

For example, in *Flamenbaum and Others v. France*¹⁴ local residents complained about the extension of the main runway. They argued that there would be more air traffic and noise and that the value of their properties would decrease.

The ECt.HR recognised that article 8 was engaged in relation to noise. It did not consider that there was a significant increase in traffic and noted that 'reduced noise procedures' were put in place by the authorities. The Court believed that the authorities had properly balanced the rights of local residents and the right of the authorities to promote the economic well-being of the region. The applicants were not able to show that the value of their houses would be affected and so the ECt.HR did not find violations of either article 8 or article 1 of protocol 1.

In the case of *Kyrtatos v. Greece*,¹⁵ the applicants complained that a development had led to the destruction of the environment. They claimed the area had lost its scenic beauty and complained about noise and light nuisance from the site. The ECt.HR noted that article 8 does not apply to the general deterioration of the environment. The pollution must affect an individual's private or family life in a negative way. The applicants were not able to show that they were directly affected and so the Court did not find a breach of their rights.

Challenging a planning decision

A third party (someone who will be affected by the decision) is not able to appeal against a decision to grant planning permission. As an objector, if you wish to challenge a decision to grant planning permission you may consider:

- a) applying for a judicial review of the planning decision. This allows a Court to look at whether the decision was made lawfully and correctly. This action must be taken within 3 months of the decision and should be discussed with your solicitor;

¹³ See *Hatton v. the United Kingdom* [2000] ECHR 709; *Powell and Rayner v. the United Kingdom* [1990] ECHR 2

¹⁴ *Flamenbaum and Others v. France* [2012] ECHR 2069

¹⁵ *Kyrtatos v. Greece*, Application 41666/98, 22 May 2003

- b) making a complaint to the Northern Ireland Ombudsman. The Ombudsman will look at whether maladministration has occurred. This type of complaint should be made within 1 year;
- c) lodging a complaint within the Planning Service's internal complaints system.

Summary

Planning proposals that impact upon your enjoyment of your home, health or privacy may engage ECHR rights. The impact on you must reach a minimum level of severity. The intensity, duration, the physical and mental effects are all important factors.

The planning authority must balance the rights of the objectors with the rights of the developer. Articles 8 and article 1 of Protocol 1 of the ECHR require this.

The State has a wide margin of appreciation, which means that it can decide how best to protect rights under the ECHR.
