# The Equality Act and its Impact on Planning Law

**John Halford, Partner, Bindmans LLP**

## Introduction

Planning is not an area of state activity where equalities considerations are at the forefront of decision makers' minds. On a traditional view, the concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group, and at best equality will be one of a number of 'relevant considerations' that merely need to pass through and be weighed in the minds of decision makers such as local authority officers and planning committee members under section 70(2) of the Town and Country Planning Act 1970. Up until recently, the only significant cases concerning the tension between general planning policies and equality law arose in the context of planning permission and enforcement decisions involving gypsies and travelers.

From the perspective of local communities, this might well seem bizarre. Planning decisions impact on everyone, but they impact on some more (and in many cases, very considerably more) than others. Central government has acknowledged this for some time: the government's overarching planning policies on the delivery of 'sustainable development' through the planning system, emphasise that local planning policies need to take into account the particular needs of women, young people and children, older people, ethnic minorities, children and disabled people. There is also solid research evidence from CABE, RICS and others about the consequences of failing to do so consciously.

This note discusses the potential of the positive equality duties in section 149 of the new Equality Act to be used by communities to transform statements of principle into enforceable rights.

**The Equality Act – an overview**

The 2010 Equality Act ('EA'), passed in the final days of the last Labour government, is largely a consolidating measure, updating the legal remedies individuals can use to challenge discrimination against them in the workplace and the education system or when buying or receiving commercial or public services. These provisions are unlikely to have much effect on planning law except where individual applications are refused on discriminatory grounds.

But the EA also contains a significant legacy – the consolidation and broadening of the 'positive equality duties' previously found in sections 71 RRA, 49 DDA and 76A(1) SDA so that 'due regard' must be had to specified equality issues in the contexts of age, disability, gender reassignment, (explicitly) pregnancy and maternity, religion or belief and sexual orientation. These provisions, set out for the most part in section 149 EA, which came into effect in April 2011.

There are some significant gaps in this broadened scope, most troublingly around the provision of public services to children.

More positively, however:

- Far more proposals and decisions are subject to the duties – section 150 provides that bodies that are not explicitly identified as being subject to the section 149 duties in the lists scheduled to the EA will nevertheless be caught, provided that the functions in question are 'public' ones (a definition that is intended to catch all functions of 'hybrid' authorities which are subject to the Human Rights Act 1998 – bodies like New Deal for Communities are likely to be caught);

- Due regard must now be had to the need to 'advance' equality of opportunity between those sharing a protected characteristic and those who do not, rather than the merely the need to 'promote' it;

- Having due regard to the need to 'advance equality of opportunity' involves 'in particular' due regard to the need to:

*'(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*

*(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*

*(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.'*

These provisions chime with observations of the Courts on the different purposes of section 71(1) (a) and (b) RRA.[1]

- Having due regard to *'the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it'* involves having due regard, in particular, to the need to—

  *'(a) tackle prejudice, and*

  *(b) promote understanding'.*

  This specificity is very welcome, given the limited case law on the concept of 'good relations'.

- It is explicitly recognized that compliance with the duties may involve treating some persons more favourably than others (provided that doing so does not breach the EA in other respects)

- Critically, judicial review remains available to enforce failures to comply with the duties, though this is subject to very tight time limits - from 1 July 2013 all planning cases must be started (i.e. filed with the Court) within 6 weeks from the date of the decision, action or failure challenged. This may not be the ultimate decision to grant planning permission, so taking specialist legal advice as soon as an actual or potential error is made by the responsible planning decision maker is very important. In most non-planning cases, the

[1] See eg. Dyson LJ in *R (Baker) v Secretary of State for the Environment* [2008] EWCA (Civ) 141 at [30]:

'*…the promotion of equality of opportunity is concerned with issues of substantive equality and requires a more penetrating consideration than merely asking whether there has been a breach of the principle of non-discrimination…'*

claim must be filed promptly and within three months of the decision challenged.

**Enforcement of positive equality duties – the story so far**

The RRA, DDA and SDA provided the legacy Commissions and, through amendments, the EHCR, with an arsenal of special regulatory powers to enforce the original positive equality duties. But perhaps more importantly, the Courts have taken a principled and purposive approach in many of the cases decided so far, allowing individuals, campaigning groups and NGOs to seek judicial review of decisions made without adequate due regard and, in many cases, quashing them thereby returning the decision making process to an early stage and preserving the status quo in the meantime.

The Courts have also applied the standing test for judicial review claims fairly and have yet to exercise discretion to refuse permission or relief on this basis. NGOs have therefore actively litigated in circumstances where neither they nor individuals would have had a realistic basis for a claim that the substantive anti-discrimination provisions of the RRA, DDA or SDA were breached (e.g. *R (Eisai) v National Institute for Clinical Excellence & Others* [2007] EWHC 1941 (Admin)).

Cases have also been won by campaigners who would not necessarily feel the greatest impact of the measure challenged (e.g. the lead case on enforcing the duty in the planning context, *R (Harris) v London Borough of Haringey* [2010] EWCA Civ 703 http://www.bailii.org/ew/cases/EWCA/Civ/2010/703.rtf) and sometimes by those who would no longer be affected by the measure challenged *(*e.g. *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882*).*

The range of decisions successfully challenged in this way (including by favorable settlements) is remarkable. They include decisions to:

- award compensation to British civilians interned by the Japanese during World War II but only if they could establish a 'blood link' to UK soil by their own or an ancestor's birth here (*Secretary of State for Defence v Elias* [2006] EWCA Civ 1293);

- instruct doctors to prescribe Alzheimer's' medicines on the basis of a language test that took no account of cognitive impairments or having English as a second language (*Eisai*);

- cut the funding of the UK's leading black theatre company, Talawa, taking no account of the lack of any other organization's ability to develop ethnic minority actors or cater to the audiences it does (*R(Talawa) Arts Council of England* CO/7705/2005);

- cut the funding of voluntary organizations in Harrow (*R (Chavda) v Harrow LBC* [2007] EWHC 3064 (Admin));

- cut the funding of Southall Black Sisters (*R (Kaur & Shah) v London Borough of Ealing* [2008] EWHC 2026 (Admin));

- refuse permission to a Sikh girl to wear a kara through the inflexible application of a school uniform policy (*R (Watkins-Singh) v Governing Body of Aberdare Girls High School* [2008] EWCA 1865 (Admin));

- amend the rules on what forms of forceful restraint of children are permitted in secure training centres (*C*);

- refuse to license a particular model of taxi for use as a hackney cab despite disabled groups making representations that this meant many wheelchair users could not travel safely *(R (Lunt and another) v Liverpool City Council* [2009] EWHC 2356 (Admin));

- drastically truncate the period of notice given to unsuccessful asylum seekers of the intention to remove them from the UK (*R(Medical Justice) v Secretary of State for the Home Department* [2010] EWCA Admin 1925); and

- grant planning permission for a development of chain stores and luxury flats challenged in *Harris*.

***Harris* – application of positive equality duties in the planning context**

The facts in *Harris* were as follows. Haringey had granted planning permission for the demolition of an much-loved building at Wards Corner which contained (among other things) a market where the traders were overwhelmingly members of London's Latin American community and a series of small, street front shops where the shops (and

the flats above them) were overwhelmingly occupied by traders/residents from BME communities. The new building for which planning permission was being sought was (among other things) a large retail development where rents would be too high for the Latin American market with (expensive) flats above. In other words: granting the planning permission would displace a group of traders who were overwhelmingly from ethnic minority communities. Haringey had treated all that as being irrelevant: thus, when council officers identified (in their report for Councillors) the considerations relevant to the decision that did not include anything relating to the ethnic profile of the people affected.

The Court of Appeal agreed with Mrs Harris (who challenged that decision), that there was sufficient potential impact on equality of opportunity between persons of different racial groups, and on good relations between such groups, to require that the impact of the decision on those aspects of social and economic life to be properly be considered in the light of the section 71 duty as above. As the Court said:

> *"Not only is there no reference to section 71 in the report to committee, or in the deliberations of the committee, but the required 'due regard' for the need to "promote equality of opportunity and good relations between persons of different racial groups" is not demonstrated in the decision making process. "Due regard" need not require the promotion of equality of opportunity but, on the material available to the council in this case, it did require an analysis of that material with the specific statutory considerations in mind."*

And then, importantly:

> *"It does not, of course, follow that considerations raised by section 71(1) will be decisive in a particular case. The weight to be given to the requirements of the section is for the decision maker but it is necessary to have due regard to the needs specified in section 71(1).*

**What principles emerge from the decided cases and what difference does the EA make?**

As noted above, the most significant changes the EA made were are to the scope of the duties and to the bodies to which they apply. The basic structure of the positive equality duties remains the same as those under the RRA, DDA and SDA, so the principles developed in cases like *Harris* remain unchanged.

It follows that:

- the duties remain triggered by the exercise of functions *('A public authority must, in the exercise of its functions….')* - and so potentially catch any decision making on planning that has equality implications, certainly from the point of consultation onwards;

- 'regard' must still be had to particular 'needs' when those functions are exercised – having equality in mind at a general or policy level is not enough;

- the duties do not require a particular outcome - what the body chooses to do once it has had the required regard is for it to decide subject – importantly - to ordinary constraints of public and discrimination law: see *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin) at [82]; and

- specific additional duties are directed at particular bodies, intended to facilitate the better performance of the general duties.

Given this, the following key principles that have been developed by the Courts apply in the section 149 context.

*Principle 1 - the duties are triggered whenever 'an issue arises'*

There will be some (though probably not many) decisions made by planning authorities which do not have equality implications for section 149 purposes. In these circumstances the amount of regard needed will inevitably be negligible. To hold that any decision impacting upon one or the groups with which the duties are concerned can be made only after a proper assessment would, in the view of the Court of Appeal, '*promote form over substance'*: see *R (Baker) v Secretary of State for the Environment* [2008] EWCA (Civ) 141 at [64].

That said, the threshold for one or more of the duties to be triggered is a very low one. In *Elias* at first instance [2005] EWHC 1435 (Admin) it was said to have been crossed because there was an *'issue which needed at least to be addressed'*: see [98].

Further, it may be obvious that issues arise in relation to section 149 in the particular circumstances of the particular development proposal or decision contemplates. In some cases third parties – such as objectors to a proposed development - may draw

the matter to the decision maker's attention. However, the responsibility to identify whether there is an issue and, discharge the duty when there is, remains that of the decision maker: see *Eisai* at [92]-[96].

*Principle 2 - the duties arise before a decision is made or a proposal is adopted, and are ongoing*

When do the section 149 duties arise? There have been two complementary answers from the Courts as regard the existing duties.

First, in *Elias* both the first instance Court and the Court of Appeal stressed:

> *'It is the clear purpose of section 71 to require public bodies … to give advance consideration to issues of race discrimination before making any policy decision that may be affected by them…'*

Compliance should therefore never be treated as a '*rearguard action following a concluded decision'* but exists as an *'essential preliminary'*, inattention to which *'is both unlawful and bad government'*: see *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWCA Civ 1139 per Sedley LJ at [3]. In *Brown* at [91]–[92], adopting the submissions of Helen Mountfield for the intervener, the Divisional Court emphasised the need for conscientiousness, rigour and an open mind when due regard is had. Its contribution to decision making will therefore have much in common with a proper consultation process.

However, the duty to have due regard is ongoing, see *Brown* at [95], and in some situations those who frame policies will be different from the decision makers who implement them. Both may well be caught. In *Baker* the duty was held to apply to an inspector's decision on an individual planning application and in *O'Brien and others v South Cambridgeshire District Council* [2008] EWCA Civ 1159 when a planning authority is considering whether to seek an injunction to restrain a breach of planning control.

*Principle 3 - the decision maker must be aware of the section 149 needs*

It might be thought uncontroversial that those responsible for having due regard must be aware of their legal obligations. This was the first principle enunciated by the Divisional Court in *Brown* at [90] and [91] picking up on *Chavda* at [40]. A similar

point was made by Davis J in *R (Meany) v Harlow District Council* [2009] EWHC 559 (Admin) at [74]:

> *'After all, whatever the general culture, there must, as the authorities show, in any individual case be the conscious directing of the mind to the obligations under the discrimination legislation before a relevant decision is made.'*

This principle is, however, not easy to square with Dyson LJ's comment in *Baker* at [40] that it was *'immaterial'* whether the planning inspector whose decision had been challenged was aware of the existence of the duty.

This conflict was resolved in *Harris*. Here the Council accepted section 71 was engaged in the planning decision under challenge but contended it had been discharged through a process of 'mainstreaming' whereby all Council policies, including its UDP, were said to have been audited for equality purposes with the result that any decision made consistently with them would 'automatically' discharge the duty. The Court of Appeal rejected this argument and in doing so explained what was different about the Planning Inspector's decision in *Baker* and the other gypsy and traveler cases that took a similar approach:

> *'The case is distinguishable from Baker and Isaacs where policies had been adopted in a Circular whose very purpose was to address the issues addressed in section 71(1). It cannot be said that the policies cited in this case were focused on specific considerations raised by section 71. The council policies to which reference has been made may be admirable in terms of proposing assistance for ethnic minority communities, and it can be assumed that they are, but they do not address specifically the requirements imposed upon the council by section 71(1).'*

It follows that the only circumstances where a decision maker's lack of awareness of section 149 to the decision they are making will be excusable is whether a policy has been devised to ensure each of the needs identified is taken into account, wherever relevant, and that policy is applied in the individual circumstances of the proposal or decision.

*Principle 4 - the amount of regard needed depends on likely impact*

The amount of regard that is 'due' (that is, the degree of attention to the needs set out in section 149 that is called for) will depend on the circumstances of the case: the greater the potential impact of a decision in planning terms, the greater the regard that must be had. The Court of Appeal stressed in *Baker* at [27] that mere recitation

of a mantra will not by itself show a positive equality duty has been discharged, but the '*substance and reasoning*' of the decision must be examined.

*Principle 5 - a properly informed, rational view must be taken on the extent of likely impact (even if there is no formal impact assessment)*

The Courts have stopped short of holding formal equality impact assessments are necessary. In *Brown* it was said to be a *'wealth of evidence'* demonstrating due regard, but no formal assessment had been carried out. The Divisional Court noted that the absence of one did not make the decision unlawful. Assessments were not explicitly required by s49A, nor under the better performance regulations. In such circumstances, it noted at [89],

> '*[a]t the most it imposes a duty on a public authority to consider undertaking a DEIA, along with other means of gathering information, and to consider whether it is appropriate to have one in relation to the function or policy at issue, when it will or might have an impact on disabled persons and disability.'*

Of course, where the body has given a commitment to undertake such an assessment and / or to consult in connection with it (for example through a policy or in an equality scheme) it will be unlawful not to honour it unless there are compelling reasons not to do so: see *Kaur and Shah* at [27].

More importantly, however, there can be no due regard at all if the decision maker or those advising it make a fundamental error of fact as a result of failing to properly inform themselves about the impact of a particular decision. This was one of the flaws of the taxi licensing decision in *Lunt*. Here the Council had argued that it was entitled to conclude that its city's hackney taxi fleet was accessible to *'wheelchair-users as a class'* and so the duty to make adjustments in accordance with section 21E DDA was not triggered. The judge found that the evidence before the licensing committee showed serious difficulties for some wheelchair users, of whom some, like the claimant Mrs Lunt, could not access a safe and secure position in order the taxis that formed the current fleet at all. It was not necessary to show that there was a denial of access to a benefit for '*wheelchair users as a whole...undifferentiated as to the size of the chair or the particular disability that may distinguish one group of wheelchair users from another*'. The error was also fatal under section 49A DDA, since the true factual position was a mandatory relevant consideration under section 49A DDA and at common law: the licensing committee therefore could not lawfully

exercise its discretion if it did not *'properly understand the problem, its degree and extent'.*

It follows that regardless of whether there is an equality impact assessment, due regard will require collection and consideration of data and information and data in relation to the people directly and indirectly affected by decision in play sufficient to enable the body in question to assess whether the decision might amount to unlawful discrimination and/or might impact on the promotion of equality of opportunity and/or might impact on the promotion of good relations, and if so the extent and nature and duration of that impact.

*Principle 6 – responsibility for discharging the duties cannot be delegated or sub-contracted*

Although that process of assessment need not be undertaken personally by the person or people actually taking the decision in question and can thus be undertaken by officers or others, the decision-maker must be sufficiently aware of the outcome of the assessment properly to discharge the section 149 duties.

*Principle 7 - where negative effects are identified, potential mitigation must be considered*

Where a proposal under consideration would have potentially negative effects (in that it may lead to unlawful discrimination, undermine equality of opportunity or good relations between person of different racial groups) "due regard" as required by section 149 would entail evaluating the extent of such effects on affected persons and considering whether there are any means (in the proposal itself or available to the authority itself as part of its functions) by which they may be mitigated.

Thus in Elias (first instance) at [97] it was noted that:

> *'"It is nowhere suggested that there was any careful attempt to assess whether the scheme raised issues relating to racial equality, although the possibility was raised; nor was there any attempt to assess the extent of any adverse impact, nor other possible ways of eliminating or minimising such impact. I accept that even after considering these matters the minister may have adopted precisely the same scheme, but he would then have done so after having due regard to the obligations under the section.'*

In *Eisai* at [92] Dobbs J observed:

> *'Rather than relying on what clinicians could do to eliminate the risk, and having regard to the need to eliminate discrimination, what could NICE itself do to reduce or eliminate any risk of disadvantage'.*

And in *Kaur and Shah* at [43] the Court noted that once LB Ealing had:

> *'identified a risk of adverse impact, it was incumbent upon the borough to consider the measures to avoid that impact before fixing on a particular solution.'*

*Principle 8 - the process of having due regard should be documented and transparent*

These issues were first considered in *R (BAPIO Action Ltd & Yousaf) v Secretary of State for the Home Department and Secretary of State for Health* [2007] EWHC 199. The Home Office asserted that it had turned its mind to s71 before drafting changes to immigration policy on foreign doctors but accepted that there was no formal record. Stanley Burnton J directed that any note or memorandum that existed to evidence this '*informal assessment'* having taken place should be put in evidence. Nothing was produced, provoking this comment at [69]:

> *'If there had been a significant examination of the race relations issues involved in the change to the Immigration Rules, there would have been a written record of it. In my judgement, the evidence before me does not establish that the duty imposed by section 71 was complied with.'*

He went on to declare that s71 had been breached in these circumstances. Similarly, Moses LJ commented in *Kaur* at [25]:

> *'The process of assessments should be recorded … Records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy maker to undertake the conscientious assessment of the future impact of his proposed policy, which section 71 requires. But a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes. The impact assessment must be undertaken as a matter of substance and with rigor.'*

**Potential problems with enforcing section 149**

Section 149 presents a number of new challenges.

*No equality schemes*

First the government has decided against better performance duties of the kind imposed under the old positive equality duties. For example, Article 2 of the Race Relations Act 1976 (Statutory Duties) Order 2001 (SI 2001/3458) required certain public authorities to periodically publish, assess and monitor a Race Equality Scheme which identifies those of its functions an authority considers caught by the overarching duty. This focused the minds of at least some public authorities on the functions caught by section 71. Many schemes were constructively produced in consultation with affected groups. Now the requirement (thought by the Coalition Government to be too administratively burdensome and costly) is gone, there will be a temptation for public bodies to be far less proactive, identifying only the most obvious functions as ones calling for rigorous decision making.

Further, when schemes identified functions as being caught by one of the existing duties, this would eliminate any dispute about whether they in fact were, narrowing the argument to the question of whether due regard had been had in the particular circumstances.

There are also no plans for any specific duty that would require an impact assessment on, say, a major planning development proposal. Subject to what is said in the EHRC's Code, at best impact assessments will be a non-mandatory means to help discharge the duty which the better, more conscientious planning authorities will continue to use.

*The Courts?*

The Courts have been generally supportive of the duties to date save in the gypsy and traveler context. In some of early cases (*Elias, BAPIO* and *Eisai*), even where a breach of a duty was established, the policy or decision might be allowed to stand, especially if an ex post facto impact assessment had taken place. This trend was reversed by *C* where the Court of Appeal held the failure to produce an assessment at the proper time was '*a defect... that is of very great substantial, and not merely technical, importance*' and the rule of law itself therefore required that the restraint rules be quashed ([54-55)]. *Harris* illustrates this principle in play: permission for a

multi million pound development was quashed despite the openly expressed reluctance of the Court.

**The EA duties in practice – some potential cases?**

The following hypothetical examples are intended to show how section 149 EA could make a very real and practical difference to planning decisions in future:

- A local authority is drawing up plans in conjunction with transport for London for buses to be diverted away form a series of streets while building work takes place. No thought is given to the particular impact on parents (predominantly mothers) who use the current bus service to access schools and nurseries in the immediate area. It is likely that this would breach section 149.

- The landowner of a local market applies for planning permission to redevelop the site for use of a chain store; the market sells speciality foods to people from the local West African community and it is clear it cannot be relocated anywhere else locally – as under the RRA post *Harris*, such a decision would need to be informed by a proper view of the negative impact on the community of the development, and on those working in the market, then a balance would need to be struck between that impact the general merits of the development, taking into account any means by which the impact might be mitigated.

- A developer applies for planning permission to build a lapdancing club two streets away from a women's shelter – the likely impact of doing so on the users of the service would need to be taken into account.

- A residential special school is refused planning permission fro a new building which would enable it to provide vocational training for 18-23 year olds with leaning difficulties – such a decision might be challenged if the authority failed to take into account the need to advance equality of opportunity for disabled people (and this could also amount to unlawful discrimination against existing individual students who would otherwise benefit from the facility).

- There is presently only one venue licensed for civil partnership ceremonies in a particular borough. Planning permission is sought for a change of use to allow a residential property to be used for this purpose, subject to the grant of

a license. Such a decision will require consideration of the equality of opportunity gays and lesbians enjoy to formalize their relationship in comparison with heterosexual couples.

- A local authority receives a central government grant to create new green spaces in a city centre. It decides to use the money exclusively in areas where the majority of the residents are white. Such a decision might well be open to challenge on the basis that there is an unassessed risk of indirect discrimination.

- A local authority completes a thorough impact assessment and finds that a development will displace a local Bengali community centre with the result that the vocational training courses offered there can no longer be accessed locally. It decides that overall, the development is appropriate. It fails to consider whether anything can be done to mitigate the impact, for example by permitting the development subject to a section 106 agreement to enable the centre to convert another local building for its use. This may well be a breach of the EA duties, opening up the planning permission to challenge.

John Halford

Bindmans LLP

j.halford@bindmans.com

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**A campaigners' checklist**

Before the decision is made…

1. might the decision lead to:

    - unlawful discrimination (including indirect discrimination and, in the disability context, an unjustified failure to make reasonable adjustments)?; or
    - the undermining of equality of opportunity (or its promotion if implemented in a particular way)?; or
    - the undermining of good relations between people who have a protected characteristic and people who do not (or its promotion if implemented in a particular way)?;

    if so, the section 149 duty is likely to be triggered;

    - ask the authority at this early stage whether it accepts one or more of the section 149 duties is triggered, if so to what extent and what it intends to do to discharge it;

2. check the authority's equality policies and schemes; in particular see if there is a commitment to undertake a formal equality impact assessment and, if so, whether if there is a policy as to how this will be done;

3. ask whether there will be such an assessment in this case (even if not required under a policy), and, if so, how it will be done so as to best take into account the views of those affected;

4. ensure that the authority's equality officers are aware of the issue – as well as those in the planning department;

5. encourage people to engage with the process at an early stage and on an ongoing basis and make their views known, especially on the extent of negative impact and what (if anything) can be done to mitigate or eliminate it – put constructive ideas to the decision makers;

6. if consultation or assessment is defective, take legal advice as soon as possible – judicial review of planning decisions must be brought within first

three months of when the grounds for challenge arose (and that may not be the ultimate decision); and

7. make sure the decision maker/s are aware of the impact – don't simply assume they will read or even be sent an impact assessment.

After an unwelcome decision…

1. seek the reasons for the decision (normally in the minutes of a meeting and grant of planning permission) as soon as possible;

2. consider whether anyone else can reverse the decision (sometimes the Mayor or the Secretary of State is empowered to do so (if so consider making representations to them – but note, this will not stop the judicial review time limit clock running);

3. consider whether a community group or individual with sufficient interest in the decision and what went wrong wishes to bring a challenge; and

4. if so, take legal advice as soon as possible – judicial review must normally be brought both promptly and within first three months of when the grounds for challenge arose.