



**Friends of
the Earth**

How to: use the law to win a local campaign

Environmental lawyer Phil Michaels offers practical advice about starting a legal action. Be warned: this is not legal advice so you must also seek professional advice at the earliest stage if you think that you may have a case

TV shows such as *LA Law* and *Allie McBeal* depict an exciting legal world of verbal duelling over fine points of the law. No wonder it is easy to see the legal route as a way of getting an expert on side who will beat the opposition into submission. This scenario is rare, so before embarking on any legal action you need to ask yourself two key questions:

- 1 Will a legal case help achieve your campaign objective?**
- 2 Is a legal case the best use of your resources?**

Legal action can be extremely expensive with limited prospects of success. It can also be very time consuming and, on a personal level, emotionally draining. That said, there may be times when taking legal action is either the last chance for your campaign or is the best option for raising the profile of the issue in the local community.

Five reasons for taking legal action

- A legal action is local news, so may result in increased media coverage for your campaign.

- Bringing legal action makes people realise your campaign is serious.
- Sometimes legal action is the only way to make the Government or a developer listen to you - a solicitor's letter can really focus the mind.
- Everything else has been tried.
- Legal action, and the associated fundraising opportunities, can raise the profile of your campaign and group.

Five reasons for avoiding legal action

- Low prospect of success.
- Extremely high cost.
- Diversion of campaigning resources away from other group activities.
- Huge amount of time involved in running a legal action.
- It can be personally exhausting and emotionally draining.

► Find a lawyer

Friends of the Earth cannot recommend lawyers. Contact the Environmental Law Foundation by tel: 020 7404 1030 to be referred to a local lawyer who can give you a free initial consultation to discuss the problem and possible solutions.

► Read up on legal issues

Find out more about tried and tested ideas in Friends of the Earth's *How to win* guides; *A guide to successful community campaigning*, *Campaign against incinerators* and *Saving wildlife sites*. Local groups can buy these publications for the special price of £2.50, order from 020 7490 1555.

How to...Pull-out section

What type of legal action will be best?

There are a number of possibilities including civil litigation, criminal prosecutions or judicial review. Most commonly you will want to bring a judicial review. A judicial review is an opportunity to ask the Court to examine a decision of a public body and (usually) to “quash” that decision if it has been made “unlawfully” (ie not taking account of material considerations; taking account of immaterial ones; acting in a “procedurally unfair way” or acting outside of the decision maker’s powers).

The Court does not decide if the decision is a good one; it decides if the decision was properly reached. Therefore if you “win” a judicial review the decision maker will often be ordered by the High Court to consider the issues and revisit its decision. The problem is that the decision maker might well arrive at the same conclusion in a procedurally lawful way that cannot be challenged. Then you will have won the argument, but lost the battle. Time and money will make a difference too.



Time is of the essence

Act promptly. This is always important in legal actions but is especially so in the case of judicial review. Seek legal advice immediately a decision is taken that you might want to challenge legally, better still, do it when you think that a decision is about to be made. In terms of judicial reviews you need to apply “promptly and in any event within three months” after the decision has been taken. If you don’t, you risk having your application struck out.

► Ways to fund legal action

- **Public funding:** which used to be called Legal Aid.
- **Conditional Fee Arrangements:** sometimes known as a ‘no-win, no-fee’ arrangement.
- **Insurance:** even if you have a ‘no-win, no-fee’ arrangement you will still be liable for the other side’s costs if you lose. One way to deal with that risk is to take out insurance.
- **Being part of a group:** so that costs can be shared.
- **Setting up a fighting fund:** to help raise money and the campaign’s profile locally.
- **Act for yourself.**

Contact the Information and Enquiries Unit on tel: 020 7490 1555 for an A4 fact sheet about *How to fund your legal action.*

► Legally right, but...

Ancient laws could have stopped airport spread

Campaigners in west London used the ancient Enclosure Acts to try to prevent hedges and important local wildlife being destroyed by a proposed M25 spur road into an expanded Heathrow airport. It was hard to find someone directly affected who could have been eligible for legal aid. But an organisation like Friends of the Earth can bring a case in the wider public interest so lack of legal aid was not a barrier to taking the case.

Money was important. The campaigners had to apply to the Attorney General for leave to bring a case. He turned it down with no explanation. As a result lack of funds meant the case ended there, even though legal advice was that destruction of the hedge would have been illegal.



U-turn ahead: anti-road campaigners during the 1990s were repeatedly frustrated by legal Pyrrhic victories, including Twyford Down and Newbury. More recently Birmingham Northern Relief Road campaigners won the legal fight but did not stop this flawed toll road being built.

Footing the bill

Before you embark on a case make sure that you have a realistic idea of the costs risks involved. There are two main sets of costs: your own legal costs (solicitors, barristers and expert witnesses), and the costs of the other party or parties which you will normally have to pay if you lose the case. These costs may often be considerably higher than your own costs, especially if the other side is a major company with deep pockets and a large legal budget. The good news is that if you win your case then the other side will normally be ordered to pay your legal costs. However, even then, they will normally only have to pay about 75 per cent of your costs meaning that you will still have to pay for about 25 per cent yourself.

Costs can vary massively. A full judicial review might cost something in the region of £10,000 - £15,000 for each party (ie for you, the Government and, perhaps, a developer). This means that if you lose the case you could be exposed to costs of £45,000.

▶ Wasted experience?

Think carefully before using lawyers for some waste issues

Arguing at a judicial review that an incinerator breaches Human Rights legislation or EU legislation is ineffective. Although incinerators pose health threats, judges are very conservative and will generally accept the advice of statutory bodies such as the Environment Agency which claims “no problem”.

Legal success takes teamwork

You will need to instruct a solicitor (unless you are representing yourself). Solicitors normally charge by the hour (often £175 per hour or more). Therefore, it is important to work with your solicitor in a way that ensures that you get the most out of his or her time.

Telling a story: before you meet your solicitor for the first time, put all your papers in order so that they tell a story. They should be arranged so that they are easily understandable to someone who has no knowledge of the situation. If the facts are complicated prepare a short note setting out the background.

Having a main point of contact: if you are working in a group make sure that one of you acts as the solicitor's point of contact. He or she should be able to make decisions on behalf of the group and be contacted easily. If the solicitor has to deal with more than one person it will increase costs.

Organised paperwork: make and keep clear, detailed and dated notes of all conversations with officials or others which might be relevant to the case. Also keep clean copies of all letters, notices and other papers. Some things that you think might not be relevant to the case often turn out to be legally important. Make sure your solicitor sees all the documents early on to avoid nasty surprises.

▶ Champagne victory disappoints

Campaigners won the case, but didn't stop the road

The Alliance against the Birmingham Northern Relief Road (BNRR) engaged legal advice in a bid to stop the road. This led to many trips to London's High Court and phone calls between the campaigners and the legal team. It involved campaigners putting their life savings and houses on the line, as well as much fundraising. Dramatically the Alliance won the principle but did not stop the road because the developers' greater assets made it harder and harder for the campaigners to fund the case against legal appeals, law lords or even Europe. Campaigners wound up the legal fight when the risks of what they had to lose massively outweighed what they could gain.



What type of evidence is needed?

Much of a solicitor's time is taken up gathering evidence and information. Often this work can be done far cheaper and just as well by you. For example, local campaigners are more likely to know the people who would make suitable witnesses.

Photographic evidence: photo or video evidence is vital if you think that the physical situation is liable to change or where there is no other way of keeping the evidence, for example if workers are about to come on to the site.

Use publicly available information resources:

the internet is a fantastic way of gathering information and of finding other people or groups which may have been involved in similar cases. Good local records are kept at libraries or can be viewed at town halls.

Use your right to know: contact the Information & Enquiries Unit on tel: 020 7490 1555 for the briefing *Using your right to know*.

► Historic night flights court ruling

In October 2001 a precedent-setting judgement by the European Court of Human Rights found the UK Government had infringed the basic human right to a good night's sleep of eight residents living near London Heathrow by failing to protect them adequately from night-time aircraft noise.

The ruling found that the Government contravened articles 8 and 11 of the European Human Rights Act following 1993 changes to night flight rules, failing "to strike a fair balance between the UK's economic well being" and applicants' right to enjoy "their homes, their private and family lives".

► Be a legal eagle

- See legal detail in the Environmental Information Regulations 1993 and the Local Government (Access to Information) Act 1985.
- For information about consultation on legislation proposals see www.defra.gov.uk/environment/pubaccess/index.htm
- The major piece of international legislation which grants us environmental rights is the UN Economic Council for Europe's Convention on Access to Information, Public Participation in Decision Making and Access to Justice. The UK is still working on incorporating this pan-European agreement into its own legislation.

