

Case Name: *Telford And Wrekin Council v Secretary of State for Levelling Up, Housing and Communities & Anor* [2023] EWHC 2439 (Admin) (12 September 2023)

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Commentary: This case concerned an application for statutory review pursuant to s288 of the Town and Country Planning Act 1990 of the Secretary of State's (the "SoS") decision to grant permission on appeal for a solar farm (the "Permission") within Telford and Wrekin Council's (the "Council") jurisdiction. The application failed due to the claim form being served out of time.

The facts

The SoS granted the Permission on Monday 27 March 2023, contrary to the recommendation of the inspector. It follows that the deadline for filing and serving the claim form was Monday 8 May 2023, however this fell on a bank holiday, namely the Coronation bank holiday, and therefore the deadline for filing and serving the claim form was actually Tuesday 9 May 2023.

The Council filed the claim form with the court on Thursday 4 May 2023, however the court did not issue the claim form until Monday 15 May. On Tuesday 16 May, the Council emailed a copy of the sealed claim form to the SoS, but not to the email address stated to be the address for service by email. Service was therefore deficient.

An email was sent by the solicitor for the SoS on Thursday 18 May pointing out that the service was deficient, and the Council subsequently served the claim form on the SoS at the correct address, but as the email was not sent until 7:22pm, service was recorded as being on Friday 19 May, a total of ten days after the deadline.

The SoS acknowledged service on Friday 19 May, and, on 9 June, applied for a declaration that the court had no jurisdiction due to the claim form being served out of time, or alternatively for an extension of time to file its summary grounds of resistance if the Council was granted an extension of time to file the claim form.

An order was made by Lang J on 5 July 2023 listing the hearing, which also required the Council to file and serve a witness statement within 28 days setting out a full account of the filing and service of the claim, together with submissions in response to the SoS's submissions and an application for extension of time, if it so wished. The Council made an application for an extension of time on 26 July 2023 in the event that its submission that the claim form was in time was unsuccessful.

The submissions

The Council submitted that the claim form was served in time due to a gap in the rules, which fail to deal with a situation in which the claim form is filed before the deadline, but not sealed and issued by the court before the deadline, making service before the deadline impossible. The Council further submitted that the timing contained within CPR 54.7, for service of the sealed claim form to be within 7 days of its issue by the court,

should be applied in the circumstances.

The SoS submitted, however, that there is no gap in the rules, which clearly require that the claim form is filed and served all within the 6-week deadline, and that a claimant should allow itself time to carry out both steps prior to the deadline.

Service of the claim form

CPR 3.1(2)(a) allows the court to extend or shorten the time for compliance with a rule, practice direction or court order, even if the application for the extension of time is made after the time for compliance has expired.

CPR 7.5 provides for a period of four months in which to serve a claim form under part 7, and CPR 7.6 goes on to provide that if a claimant applies to extend the period for compliance after the end of the period, the court may only make such an order if the court has failed to serve the claim form or the claimant has taken all reasonable steps to comply but has been unable to do so.

Referencing the case of R(The Good Law Project) v Secretary of State for Health and Social Care [2022] EWCA Civ 355, which dealt with a judicial review, Eyre J agreed with Lang J that whilst CPR 7.6 did not directly apply as it applies to extension of a Part 7 claim form, the principle should be applied to govern CPR 3.1(2)(a), and with reference to the case of Halton Borough Council v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 293 (Admin), he agreed with Judge Stephen Davies that there is no reason to treat section 288 challenges any differently to judicial reviews on the point of applications for extension of time for service of a claim form.

Paragraph 1.2 of Practice Direction 54D defines 'planning statutory review' as meaning 'a claim for statutory review under inter alia s.288' and paragraph 4.1 of the same Practice Direction provides that the Part 8 procedure applies in a claim for planning statutory review. Paragraph 4.11 of PD54D then states that "the claim form must be served within the time limited by the relevant enactment for making a claim for planning statutory review set out in paragraph 1.2".

Conclusion

In respect of the deadline for service of the claim form, Eyre J agreed with the SoS's analysis, that there is no gap in the rules and that a claimant must ensure enough time to file and serve the claim form within the required period. To take any other approach would create too much uncertainty as to whether a claim had been filed with sufficient time for the court to issue, and at what point the recipient of a permission could safely proceed on the basis that no legal challenge had been made.

In respect of the application for an extension of time, Eyre J found that the Council had not taken all reasonable steps to comply with PD54D by waiting until 4 May to file, when 6 and 7 May were a weekend, and 8 May was a bank holiday. Eyre J also noted that no effort had been made to alert the court to the urgency of the matter when filing the claim form, or by chasing the matter at any time on 4 or 5 May. Eyre J also held that the

Council had not acted promptly in making its application, which could have been made as early as 9 May, but was instead made on 26 July. Therefore, the claim form was out of time. The application for an extension of time was refused and the court had no jurisdiction.

Case summary prepared by Sophie Bell