

Case Name: *Home Farm Land Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor* [2023] EWHC 2566 (Admin) (10 October 2023)

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Commentary: While hard copy claim documents had been deposited at the Administrative Court Office (ACO) drop box on the day of the statutory deadline within the ACO's opening hours, non-compliance with the ACO's post-pandemic operating procedure meant the documents were not considered to be filed until the following day. The High Court refused a claim for permission to apply for planning statutory review together with applications for an extension of time and relief from sanctions on the basis that the claim was not filed and served within the strict six-week time limit.

Background

The Claimant sought, under section 288 of the Town and Country Planning Act 1990 (TCPA 1990), permission to apply for statutory review of a planning inspector's decision dated 22 September 2022.

Section 288(4B) TCPA 1990 provides that an application for leave "must be made before the end of the period of six weeks beginning with the day after" one of the events listed therein. In the context of claims under section 288 TCPA 1990, case law has confirmed that time starts to run after the date of the decision letter. This statutory time limit can only be extended if the ACO is closed or in exceptional circumstances. CPR Practice Direction 54D confirms in paragraph 4.11 that the claim form must be served within the time limit specified in section 288(4B) TCPA 1990.

In this case, the final day for filing and serving the claim was 3 November 2022. On 3 November 2022, a courier deposited the claim documents in the ACO drop box at 15:45. At 19:04, the Claimant sent the unsealed claim form and bundle to the Government Legal Department's "new proceedings" email address.

On the following day, the ACO confirmed the claim documents had been received in the drop box. Following some amendments, the sealed claim form was sent by the ACO to the Claimant, which stated that the dates of filing and issuing were both 4 November 2022. The Claimant sent the sealed claim form to a mistyped email address the same day.

Judgment

Filing the claim form

Despite arguments on behalf of the Secretary of State that there was no longer any provision for claims to be filed in hard copy, the Judge held this was not the case and a claim could be filed through the ACO drop box.

However, the Judge, after considering the review of authorities by the Court of Appeal in

Croke v Secretary of State for Communities and Local Government [2019] EWCA Civ 54, held that depositing the claim form in the drop box was not enough for it to be filed within the meaning of the CPR. This could only be done when the claim form was taken from the drop box to the ACO and approved for filing by a member of the ACO staff.

It was the Judge's view that the ACO is entitled to manage its workload by imposing deadlines for filing documents if same day processing is required. In line with the provision in the 2022 Administrative Court Guide, the drop box is routinely emptied at 9:30 and 14:30 and so documents deposited after 14:30 will not be processed until the following day, unless a request for urgent collection is received. The Claimant did not make such a request meaning that the claim documents did not arrive in the ACO until the following day, out of time.

The Judge further held that the claim was not exceptional and declined to exercise the Court's limited discretion to extend the statutory time limit.

Serving the claim form

Although the Judge considered that the failure to file in time was enough to dispose of the claim, the Judge considered service of the claim form. The Judge considered that the claim form was not validly served in time as (a) the sealed claim form was sent on 4 November 2022 after the expiry of the time limit and (b) the sealed claim form was not sent to the correct address and so was not validly served.

The Judge further considered, following the approach of the Court of Appeal in *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355, the Claimant had not taken all reasonable steps to effect valid service nor acted promptly and so the Judge declined to exercise the Court's power to extend time for compliance.

Comment

Although this decision is useful confirmation that it is still possible to file a claim in hard copy, if using the ACO drop box, parties will need to be wary that a claim will only be filed once it is taken from the drop box and approved for filing by a member of the ACO staff. This decision acts as a reminder of the strict six-week time limit applicable to both filing and serving a planning statutory review claim and illustrates the risks that can be encountered when seeking to do so close to the deadline. Anyone looking to make such a claim will be well advised to act promptly and to take care to ensure compliance with all applicable formalities.