

Case Name: *Herstmonceux Museum Limited V Wealden District Council* [2025] EWHC 1863 (Admin)

Full case: [Link](#)

Commentary: Mrs Justice Lang determined that the Court lacked jurisdiction to determine a claim under section 288 and an appeal under section 289 of the Town and Country Planning Act 1990 ("**TCPA**") in relation to an Inspector's decision on an appeal against an enforcement notice. The claim could not proceed under section 288 as it concerned an appeal and not a decision to grant planning permission (following *De Souza*). In respect of the section 289 appeal, Herstmonceux Museum Limited ("**Applicant**") had failed to comply with a number of the requirements of the Practical Direction 54D, most notably the failure to effect valid service. The failure to effect valid service also applied to the section 288 claim. Service on a minister of the Crown must be made on the Treasury Solicitor at the Government Legal Department and it was not valid service to have sent the documents to the Secretary of State for Housing and Communities (the first respondent). After applying the three stage test in *Denton v T H White* [2014] 1 WLR 3926, Mrs Justice Lang determined the procedural failures were so serious and extensive that relief from sanctions should not be granted.

Facts:

The Applicant has sought to proceed with a claim for planning statutory review under section 288 of the TCPA in relation to a decision of the Secretary of State for Housing, Communities and Local Government's ("**First Respondent**") Inspector. The Inspector's decision dated 10 February 2025 dismissed the Applicant's appeal against an enforcement notice from the second respondents, Wealden District Council ("**Council**") in relation to a development in breach of planning controls at the Old Steam House, Lime Park, Church Road, Herstmonceux, Hailsham, BN27 1RF.

To start the proceedings for this matter, the First Respondent applied for an order pursuant to Civil Procedure Rule ("**CPR**") 11.1 to declare that the court did not have jurisdiction to determine the claim for a planning statutory review or appeal under these parts of the TCPA, and that the claim form should be set aside. The Council supports this. Importantly, the First Respondent's claim form was never validly served and the procedural requirements under the CPR were not complied with. The First Respondent and Council submitted the claim falls outside the scope of section 288 of the TCPA and could only be pursued under section 289 of the TCPA.

It is important to understand how the Applicant commenced and progressed their claim, which was by way of a part 8 claim form indicating the claim was under section 288 of the TCPA and "Other" in which the Applicant stated the challenge was also being made under section 289 of the TCPA. The Applicant stated on the form that leave was sought to appeal to the High Court (Planning Court) under section 289 (or 288). The

Applicant made several additional procedural omissions for both section 288 and 289. The timeline of key events is as follows:

- 10 March 2025 – Applicant filed part 8 claim form applying for planning statutory review at the Administrative Court Office.
- 12 March 2025 – Applicant sent a letter (including the claim form and bundle) by post to the First Respondent, rather than to Treasury Solicitor at the Government Legal Department.
- 17 March 2025 – The First Respondent received the documents.
- 27 March 2025 – Government Legal Department first learned of the claim when informed of it by the Council.
- 31 March 2025 – First Respondent staff forwarded the documents to the Government Legal Department.
- 10 April 2025 – The First Respondent filed an acknowledgement of service and application for extension of time.
- 17 April 2025 – The Applicant wrote a letter to the Court requesting to file the appropriate forms retrospectively. In the letter the Applicant submits it was clear from the original claim form that they were seeking permission to appeal to the High Court and that they acted in good faith.
- 2 May 2025 – Dove J made an order referring to the First Respondent's application for permission to have an oral hearing but mistakenly believed this was a claim for judicial review.
- Day before hearing – the claimant / Applicant emailed the parties a document drafted on a plain piece of paper titled "draft claim form for judicial review".

Analysis:

Mrs Justice Lang stated it was not appropriate to commence a statutory appeal under section 289 in a Part 8 claim form as it is not a Part 8 claim. If the Applicant wanted to appeal under section 289, then within 28 days after the notice of the decision they should have made an application in writing with the reasons why permission should be granted.

Further to this failure, Mrs Justice Lang accepted the submissions made by the First Respondent and Council regarding procedural failures made by the Applicant in relation to progressing a statutory appeal under section 289 of the TCPA. Specifically, by failing to comply with the requirements of PD54 by not:

- (prior to filing the application) serving a copy of the application, the witness statement and the draft appellant's notice on the first respondent and the Council;
- filing a witness statement stating who had been served with the application, and why any person who ought to have been served had not been served;
- providing a copy of the decision under challenge;

- completing the above steps before the expiry of the 28 days allowed for making the application (the last day being 10 March 2025, the day the part 8 claim form was filed); and
- never effecting valid service of the application and the draft appellant's notice on the First Respondent by sending the documents to the Secretary of State for Housing and Communities, instead of the Treasury Solicitor at the Government Legal Department. The Crown Proceedings Act 1957 and CPR 6.10 and PD 6.6, provide that service on a minister of the Crown must be made on the Treasury Solicitor.

Mrs Justice Lang stated that for the same reasons the Applicant had also failed to effect valid service of the claim under section 288 of the T CPA.

Mrs Justice Lang accepted the First Respondent's submission that the test to apply to the applicant's application under section 289 is whether there should be relief from sanctions. Mrs Justice Lang took into consideration commentary from a variety of cases, but ultimately applied the three stages of the *Dentons* test.

Judgment:

In relation to the section 289 claim, and following the three stage *Denton's* test, Mrs Justice Lang held:

1. The procedural breaches were undoubtedly serious.
2. The Applicant was responsible for the procedural breaches and failed to research the procedural requirements adequately itself or to obtain legal advice.
3. When considering all circumstances, while it is clear the application form sets out the Applicant intended to pursue the challenge under either section 288 or 289 and using the wrong form may not be fatal where other procedural requirements are met, the Applicant in this matter completely ignored the requirements outlined in Practice Direction 54D with the most egregious error being failing to serve the proceedings on the First Respondent.

Mrs Justice Lang considered the procedural failures are so serious and extensive that relief from sanctions should not be granted and that the court lacks jurisdiction to determine the claim and appeal due to the failure to comply with the requirements of Practice Direction 54D.

In relation to the section 288 claim, while the form was filed in time, Mrs Justice Lang determined the Court also lacked jurisdiction to determine the claim due to failure of service on the First Respondent and there being a clear lack of effort on the Applicant's part to meet the service requirements or apply for an extension of time.

Mrs Justice Lang concluded that a declaration would be made to set aside the claim form sealed on 11 March 2025.

Case summary prepared by Poppy Mitchell-Anyon