

Neutral Citation Number: - [2024] EWHC 1219 (Admin)

Case No: AC-2023-MAN-000264

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ

Date: 24 May 2024

Before:

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

**THE KING (on the application of Ms SUZANNE
MERRILLS)**

Claimant

- and -

**SECRETARY OF STATE FOR LEVELLING UP,
HOUSING AND COMMUNITIES**

Defendant

-and-

**(1) CHESHIRE WEST AND CHESHIRE
COUNCIL**

(2) PARKGATE NURSERIES LIMITED

Interested Parties

Mr Killian Garvey (instructed by **Irwin Mitchell LLP Solicitors**) for the **Claimant**
Mr Ben Du Feu (instructed by **Government Legal Department**) for the **Defendant**
Mr John Hunter (instructed by **Aaron and Partners Solicitors**) for the **Second Interested**
Party

Hearing date: 14 February 2024

APPROVED JUDGMENT

Deputy High Court Judge Karen Ridge:

Introduction

1. The applications before the court arise as a result of the late service of a sealed claim form. The claim relates to a statutory challenge made pursuant to section 288 of the Town and Country Planning Act 1990 against the Defendant's decision to allow an appeal against the local planning authority's refusal of planning permission. The proposed development comprised live-work units, affordable homes, heritage centre and community car park. The Inspector appointed by the Defendant allowed the appeal on 4 May 2023 and granted planning permission. It is that appeal decision which is subject to challenge.
2. The Claimant filed the claim form with the court on 14 June 2023 by electronic means. It is accepted by all parties that the deadline for filing and serving the sealed claim form was midnight on 15 June 2023. The issue which has arisen is in relation to the late service of the sealed claim form. In this case the sealed claim form was served on 21 June 2023. An unsealed claim form had been served on the Defendant and the Local Planning Authority within the deadline.
3. There are three applications before the court which all go to the same issue. On the 5 July 2023 the Claimant made an application for an extension of time for service of the sealed claim form. That application is resisted by the Defendant and the second Interested Party (IP2), the developer and beneficiary of the planning permission. The Claimant's application is supported by the local planning authority, the first Interested Party, who have played no part in the proceedings.
4. The Defendant and IP2 make their own, identical applications for a declaration that the court has no jurisdiction to determine the claim pursuant to Part 11 of the Civil Procedure Rules. In the alternative, if the court extends time for service and concludes that it does have jurisdiction, then the Defendant and IP2 seek an extension of time for the filing and service of their respective summary grounds of resistance.
5. I am grateful to counsel for their helpful written and oral submissions.

Background

6. The Claimant's legal representative contacted the court one week prior to the statutory deadline to enquire about the arrangements for submission of planning claims. That email was sent to the Manchester Civil Justice Centre generic email address on 8 June 2023. It was forwarded to the Administrative Court email address the following morning, Friday 9 June. On Tuesday 13 June 2023 at 10.05am, the Claimant's representative emailed the court informing it that the deadline for filing was Thursday 15 June 2023 and seeking details of the filing arrangements. The court responded by email timed at 10.32am to the effect that filing could be either by hard copy in person or by post to the court Office OR by email to the administrative court email address (with a 20MB limit) OR via an upload link which would have to be requested.
7. On 13 June 2023 the Claimant's representative emailed the court to ask for an upload link by email timed at 11.51. There was no response and the following day, 14 June 2023, at 09.26 a chasing email was sent. The upload link was sent from the court to the Claimant's representative at 10.50 that same day. At 14.58 later that same day, the Claimant's representative emailed the court office to confirm that the Claim bundle had been uploaded and told the court that it had been served on the Defendant and Interested Parties. The representative sent a further email again telling the court that the claim bundle had been uploaded at 15.35.
8. On 15 June 2023 at 13.02 the legal representative chased the court to seek confirmation that it had safely received the claim bundle. At 19.05 on 15 June, a further email was sent by the legal representatives asking the court to confirm safe receipt of the claim bundle and that it had "issued the stamped claim form so that we can serve this on the other parties". There was no immediate response from the court and the deadline was passed at midnight on the 15 June. On 16 June 2023 the Claimant's solicitors telephoned the court office on 4 separate occasions without response. An email was then sent to the court that same day at 12.53 asking the court to revert to the writer as soon as possible to confirm that the claim form had been received and stamped.

9. The Claimant's legal representative then spoke to the court clerk on Friday 16 June 2023 at 13.57 and was told that if the claim form had been filed using the upload link provided by the court it would have been received on that date and it should be sealed on that date also. That call was followed by an email from the Claimant's representatives at 14.28 asking for confirmation that the bundle was received on 14 June and requesting a copy of the sealed claim form of the same date. Nothing further was heard from the court and on Monday 19 June 2023 the Claimant's representative attempted to telephone the court on 4 occasions without success.
10. On 19 June 2023 a further email was sent to the court asking for a copy of the sealed claim form. A chasing email was sent on 21 June 2023 at 10.37am. At 11.13am the court clerk emailed the legal representatives apologising for the delay in responding and confirming that the claim form was received and "I will get this issued now". The sealed claim form was emailed to the legal representative by the court at 11.58 on 21 June 2023. The sealed claim form was served on the parties within an hour of its receipt from the court.
11. The application for an extension of time was made by the Claimant on 5 July 2023.

The Law

12. The claim is brought under section 288 of the Town and Country Planning Act 1990 which provides that such challenges must be made within a 6-week period of the decision complained of. Time starts to run the day after the date of the decision letter. It is agreed by all parties that the deadline in this case fell at midnight on 15 June 2023.
13. The relevant documents were filed with the court on 14 June 2023, the day before expiry of the deadline. Paragraph 4.11 of PD 54D provides 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." The 'relevant enactment' referred to in paragraph 1.2 is s.288 TCPA 1990. Thus, service of the claim form must also be effected within the same six-week period for making the claim.

14. Paragraph 4.8 of PD 54D provides that the claim form must be served on the appropriate Minister or Government Department and, where different, on the persons or bodies indicated in the table produced. If the application relates to any decision...to which section 288 of the Town and Country Planning Act 1990 applies...the authority directly concerned with the decision OR if that authority is the claimant, on every person would be entitled to apply under s.288 if that person were aggrieved by the decision in question.
15. The Claimant was unable to serve the sealed papers on either the Defendant or IP within the statutory 6-week period due to the court not issuing the sealed papers until after expiry of that time limit.
16. The court has the power to extend the time for service of the claim form under CPR r.3.1(2)(a) if application is made. The test to be applied on an application for an extension of time for service of a claim form in the context of a judicial review challenge has been recently clarified by in *R (Good Law Project) v Secretary of State for Health and Social Care [2022] EWCA Civ. 355*. Carr LJ (as she then was) distinguished service of a claim form from other procedural steps, given that service of originating process is the act by which the Defendant is subjected to the jurisdiction of the court.
17. In light of the emphasised importance of service the court in *Good Law* held that, by analogy, CPR 7.6 should apply to an application to extend time for service of a judicial review [80] and [85]. Carr LJ (as she was then) said at paragraph 85:

“As for extensions of time for service of a judicial review claim form, whilst CPR 7.6 does not directly apply, its principles are to be followed on an application to extend under CPR 3.1(2)(a). Thus, unless a Claimant has taken all reasonable steps to comply with CPR 54.7 but has been unable to do so, time for service should not be extended”
18. CPR 7.6(3) provides:

“ If the claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the court may make such an order only if –

(a) the court has failed to serve the claim form; or

(b) the claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and

(c) in either case, the claimant has acted promptly in making the application”

19. This approach was deemed to be appropriate on a challenge under section 288 by HHJ Stephen Davies sitting as a Judge of the High Court in *Halton Borough Council v SSLUHC* [2023] EWHC 293. It has further been endorsed in a number of other s288 challenges, including *Telford and Wrekin Council v SSLUHC* [2023] EWHC 2439, *Future High Street Living (Staines) Limited v SSLUHC* AC-2023-LON-000139 and *Home Farm Limited v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2566.
20. In the *Telford* case the claim had been filed 2 working days prior to the 6-week deadline, a sealed claim form was issued some 5 days after the deadline and the sealed claim form was served 4 days following receipt of the sealed form. Eyre J. found that the Claimant had not taken all reasonable steps within the 6-week period. He opined that the filing was right at the end of the 6-week period in circumstances where the following Monday was bank holiday and the Claimant did not alert the court to the need for urgent action. Eyre J. concluded that the legal representatives in that case had not appreciated the rigour of the time limit and they had not chased matters in the two days following the day on which they sent the claim form to the court.

Discussion

21. All three applications turn on two matters: the question as to whether the Claimant has taken all reasonable steps to serve a sealed claim form on time and

secondly, whether a prompt application to extend time has been made. The court may only make an order for extension of time after the period for service has expired where the claimant has taken all reasonable steps to comply with rule 7.5 (or PD 54D as is the case here) but has been unable to do so and where the claimant has acted promptly in making the application.

22. **Reasonable Steps:** In this case, it is apparent that the Claimant was aware of the need for rigour in adhering to the strict 6-week timetable. The Claimant's representative took the precaution of telephoning the court one week before the deadline to investigate the arrangements for issuing the claim. The Claimant's representatives had been informed as to the various options for issuing the claim and elected to upload the claim form electronically. The claim bundle was sent to the court electronically one day before the deadline. As the deadline approached it was always open to the representatives to attend at the court office and wait for the claim form to be issued and a sealed claim form provided.
23. The email of the 13 June informs the court of the impending deadline of 15 June for filing, but it made no mention of the importance of the return of a sealed claim form.
24. The upload link was sent to the Claimant's representative at 10.50 on 14 June 2023 and the claim was uploaded. At 14.58 the Claimant's representative informed the court that the claim was uploaded and that it had been sent to the Defendant and Interested Party. That email did not refer to the importance of the receipt of the sealed claim form and there is also the reference by the Claimant's representative to the claim having been served on the Defendant and interested parties by the Claimant.
25. A further email was sent to the court at 15.35 on 14 June 2023 reiterating that the claim form had been uploaded. On the 15 June the representative emailed the court at 13.02 seeking confirmation that the claim bundle had been received. No response was received, and a further email was sent at 19.05. That email refers to the need for the Claimant to serve the sealed claim form on the other parties but it was the first time that this requirement is flagged to the court and the email was sent outside office hours on the last day for service. It is

reasonable to expect that it could only have been actioned by the court staff on the next working day which was after the statutory deadline.

26. Some of these actions indicate a legal representative aware of the importance of the meeting the deadline and taking some steps to ensure that it was aware of the court procedures and requirements. Once the deadline was passed at midnight on 15 June 2023, the Claimant's representatives continued to chase the court. The following day (Friday 16 June 2023) 4 attempts were made to telephone the court at various times without response. An email was sent to the court asking the court to get back to the writer as soon as possible. At 13.57 the Claimant's representative spoke to the court clerk by telephone and was told that the claim would be sealed on the day it was uploaded. A further email was sent half an hour later asking for the court to send the sealed claim form.
27. The weekend intervened and on Monday 19 June the Claimant's representatives chased the court again for a sealed claim form. Nothing further was heard, and it was only after a further email to the court on 21 June that a sealed claim form was emailed to the Claimant's representatives. The sealed claim was served on the parties within one hour of its receipt from the court.
28. In this instance the solicitors took the precaution of contacting the court one week before the deadline to discuss arrangements. Due to a series of delays, some of which were attributable to delays in the court responding, the deadline of 15 June 2023 was fast approaching. On 14 June 2023 the Claimant's representatives proceeded to pursue the electronic issue of the claim, knowing that the claim form had to be issued and a sealed claim returned and served. The representatives had the option of attending at the court office to issue the claim form in person and obtain a sealed form for service but did not do so.
29. Whilst the Claimant's legal advisors had notified the court on 13 June 2023 of the deadline on the 15 June 2023 and had continued to chase the court in the days up to the deadline, at no point had the representatives impressed upon the court the need for a sealed claim form to be returned to enable service before the deadline. I accept Mr Du Feu's point that it may have been advisable for

the representatives to have said to the court staff in terms ‘we require a sealed claim form prior to 4pm on 15 June to enable us to serve the other parties.

30. The legal representatives continued to chase the court over the course of the next few days seeking a sealed claim form but again, there is no indication that the representatives told the court staff of the importance of the receipt of a sealed form. The sealed claim form was received on 21 June with an apology from the court. Within one hour of receipt the Claimant’s representatives had served it on the parties.
31. The legal representatives are a large law firm with specialist planning knowledge. They were clearly aware of the importance of serving the sealed claim form within the statutory timeframe. The courts have repeatedly emphasised the importance of valid and timely service of proceedings. This is especially so in view of the short time limits in statutory review cases concerned with planning decisions.

32. As Eyre J. said in the *Telford* case:

“The provisions of paragraph 4.11 are clear. The application under section 288 must be filed and served within a six-week period. A claimant must proceed on the basis that he, she or it needs to act sufficiently quickly so as to be able to do both, that is both file and serve, in the six-week period. The consequences are potentially harsh in the sense of being firm and causing severe consequences for a party who does not comply because such a party loses the opportunity to bring a statutory review but they are not by any means unworkable and the position is clear”

33. The possible difficulties of leaving the issue of a sealed claim form until one or two days was highlighted in the recent *Halton BC* decision where HHJ Stephen Davies observed that such a strategy constituted an unnecessary risk given that the Claimant would need the co-operation of the court to obtain a sealed copy of the claim form for service.
34. In these circumstances I conclude that the Claimant has failed to take all reasonable steps open to it to effect service of a sealed claim form within the statutory period. Given the impending deadline the Claimant’s representative did not avail itself of the opportunity to attend in person. The emails to the court

did not impress upon the court the urgency and importance of the Claimant receiving a sealed claim form in time to enable good service upon the other parties before midnight on 15 June 2023.

35. **Promptness:** The application for an extension to extend time was made on 5 July 2023. That was some two weeks after late service of the sealed claim form on 21 June 2023 and some 20 days after the statutory deadline. As at the 15 June 2023 the Claimant's legal advisors were aware that the requirements for service of the sealed claim form had not been met. An application for an extension should have already been in contemplation at that point.
36. I have noted the comments of the Claimant's legal representative that it was necessary prior to making the application for an extension, to obtain full instructions from the Claimant and that discussions advising her as to possible costs risks took place over 30 June 2023 and 3 July 2023. However, the Claimant's advisers would have realised on 15 June 2023 that the deadline for service had been missed and that an application for an extension would be necessary. Those discussions could have commenced much sooner.
37. I accept that an application for an extension may have been delayed until 21 June 2023 due to the need for an issued claim form and claim number. However, the application came some two weeks after the date on which the sealed claim form was received. That is not a prompt application in the context of the tight timescales in these types of proceedings.
38. For the above reasons I am satisfied that the Claimant has not demonstrated that all reasonable steps were taken to serve the sealed form within the relevant timescale and further, that the application for an extension was not made promptly.
39. In relation to the exercise of a wider discretion to extend time, I accept the submissions of Mr Du Feu. The delay in serving the sealed claim form was significant. In the *Halton BC* case, HHJ Stephen Davies categorised a delay of a day or more as serious and significant given the importance attached to service of the claim form within the period prescribed by statute. The Claimant is not saved by the service of an unsealed claim form. The prejudice to the Defendant

and other parties in the court exercising its discretion in relation to defective service was acknowledged in the *Good Law Project* given that in such circumstances the Defendant and other parties would be unable to rely on an accrued limitation defence.

40. Whilst Mr Garvey has referred to the surrogacy principle, the authorities indicate that the discretion disapplying the surrogacy principle should be used in limited circumstances. I agree with Mr Du Feu that the situation here is more analogous to that in *Good Law* and that the Claimant is fixed with the actions of her legal advisors.
41. Therefore, the application for an extension of time is refused.
42. CPR Part 11 provides that a party who wishes to dispute the court's jurisdiction to try the claim or argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction.
43. The Defendant and IP2 have established that the Claimant did not effect valid service of the claim form and bundle before the time limit expired on 15 June 2023. The Claimant's application for an extension of time has been refused.
44. Therefore, the applications by the Defendant and IP2 for an order under CPR Part 11 is granted and the claim form is set aside.
45. I would ask Counsel to agree an order accordingly.