

Case Name: *Croke v Secretary of State for Communities and Local Government & Anor* [2019] EWCA Civ 54 (01 February 2019)

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Commentary: This appeal concerned an appellant who had narrowly missed the six-week time limit for bringing a challenge under section 288 of the Town and Country Planning Act 1990. The appeal against the High Court's refusal of leave under section 288(4A) was dismissed.

The appellant had missed his train on the last day for filing the claim, had then emailed the form to his agent close to the Court to file on his behalf and his agent had then been turned away from the Court by security at 4:25pm. The appellant had then attempted to file the following day but was turned away by the Court office for using the wrong form (N208 instead of N208PC). The Court considered the principle in *Kaur v Russell* which applies where a time limit ends on a day on which the court is closed for business for the whole day, so that the time is extended until the next day on which the court office is open. This did not apply in this case and there was no justification to extend the principle.

The Court also considered whether there had been a breach of the right of access to a court under article 6(1) of the ECHR. There was no conflict with the appellant's article 6 right in this case taking into account the consequences of the decision (it was open to the appellant to apply again for planning permission), the availability of evidence (the relevant documents should have been in his possession), the fact that he had not personally done all he could to bring and notify his proceedings timeously (by leaving it until late on the final day of the six week period). The security officer's actions at 4:25pm were not the sole or critical event in the failure to lodge the application in time.

The second part of the claim was that the time limit should have been extended from the following day when the Court office wrongly refused to accept the claim on form N208. Although this was academic because the claim had failed on the first part, the Court did observe that, at the time, both forms had been available due to discrepancies between Practice Directions 4 and 8C and therefore there would have been force in the submission that the refusal of the court office staff to permit the appellant to lodge his application on form N208 amounted to "exceptional circumstances" justifying an extension of time.

Case summary prepared by Town Legal LLP