

Planning Court & COVID-19



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Overview

- Clear steer from the Lord Chief Justice that courts must continue, but taking all precautions to avoid unnecessary contact

“Hearings requiring the physical presence of parties and their representatives and others should only take place if a remote hearing is not possible and if suitable arrangements can be made to ensure safety.”

- New [Practice Direction 51Y](#) together with [protocol](#) for telephone and video hearings and [HMCTS guidance](#)
- Time still runs!!

Planning Court: limitation periods for main business

- Some limitation periods which **cannot** be extended by Court:
 - Claims under s 288 TCPA 1990 (challenges to most Inspector/Secretary of State decisions) – 6 weeks
 - Claims under s 113 PCPA 2004 (local plan challenges) – 6 weeks
 - Claims under s 118 Planning Act 2008 (challenges to DCOs) – 6 weeks
- Some limitation periods which **can** be extended by Court (but rarely are, before now):
 - Claims for judicial review of planning decisions (e.g. grant of permission by local planning authority) – 6 weeks from decision
 - Claims under s 289 TCPA 1990 (challenges to appeals against enforcement notices) – 28 days from decision

Planning Court: issuing

- Admin Court Office and Fees Office are closed so all claims must be lodged electronically
- Issue date will be date email received (although will be processed later)
- Claims to be filed by email with fees paid by PBA account or an undertaking to pay by cheque within 7 days
- Parties must lodge an electronic bundle (see guidance for approach to bundles)
- Note that some proceedings must still be served before issue (e.g. s 289 TCPA 1990)

Planning Court: filing other documents

- Any response to a claim or appeal must also be lodged electronically with the Administrative Court Office
- The email address for non-urgent business is:

administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk

Key procedural tools: time limits, phone and video

- [CPR 3.1\(2\)](#) provides that the court may:
 - (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
 - (b) adjourn or bring forward a hearing;
 - ...
 - (d) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- [CPR 2.11](#) provides that certain time limits can be extended by the written agreement of the parties

Adjournment on “health” grounds

- For recent Court of Appeal authority (outside of current crisis) see e.g. *Sanjay Solanki v Intercity Telecom Limited* [\[2018\] EWCA Civ 101](#) at [32]-[38]
 - Fairness and Article 6(1) considerations are key
- Courts have traditionally required a high standard of medical evidence to support adjournment: see e.g. *General Medical Council v Ijaz Hayat* [\[2018\] EWCA Civ 2796](#) at [38]
 - It seems unlikely that position would be sustained in the current crisis

Video conference

- For applications, [PD 23A](#) para. 7 provides “*Where the parties to a matter wish to use video conferencing facilities, and those facilities are available in the relevant court, they should apply to the Master or District Judge for directions.*”
- See [PD 32](#), Annex 3 for detailed guidance on use of video conferencing, particularly for taking evidence by video conference

New PD and Guidance

- PD 51Y allows for hearings to take place in private where broadcast of phone/video not possible
- Arrangements are being made for press to be joined to video/phone hearings
- “[Protocol Regarding Remote Hearings](#)” provides key guidance including specific instructions on electronic bundles

Planning Court timescales

- [PD 54E](#) sets “target timescales for the hearing of significant Planning Court claims”
- These are court targets and there are no sanctions for failing to meet those targets
- For non-significant cases there are no targets in the CPR/Practice Directions
- Most planning cases will give way to “urgent business” if the Court is under pressure

Experience so far...

- Listing office/Judge's clerk will contact parties close to hearing date to make arrangements
- Planning hearings proceeding remotely in London, Birmingham and Manchester
- Telephone and video hearings have already taken place (BT, Skype & Zoom)
- Authorisation to record (pursuant to CPR 39.9) has been granted in certain cases

Thank you for listening

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