

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 September 2024

Before :

MR JUSTICE LAVENDER

Between :

THE KING
on the application of
ETM CONTRACTORS LIMITED

Claimant

- and -

BRISTOL CITY COUNCIL
ESTEBAN INVESTMENTS LIMITED

Defendant

Interested
Party

Jenny Wigley KC (instructed by **Gunnercooke LLP**) for the **Claimant**
Peter Wadsley (instructed by **Bristol City Council**) for the **Defendant**
Andrew Byass (instructed by **Clarke Willmott LLP**) for the **Interested Party**

Hearing date: 25 July 2024

JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. The claimant, ETM Contractors Limited, wishes to apply for permission to apply for judicial review of the decision of the defendant, Bristol City Council (“the council”), to grant an outline planning permission (“the planning permission”) on 22 August 2023 to the interested party, Esteban Investments Limited (“Esteban”).
2. The present applications arise because:
 - (1) The claimant should have filed the claim form by 3 October 2023, but did not file it until 10 October 2023.
 - (2) The claim form was issued on 11 October 2023, which meant that the claimant should have served it on the council and on Esteban by 18 October 2023, but the claimant:
 - (a) did not serve it on the council in a permitted manner until 27 October 2023; and
 - (b) did not serve it on Esteban in a permitted manner until 24 October 2023.
3. By an application notice issued on 26 October 2023, the claimant applied for:
 - (1) an order pursuant to CPR 3.1(2)(a) extending the time limited for filing the claim form; and
 - (2) either:
 - (a) an order pursuant to CPR 16.5(2) validating the service of the claim form by an alternative means; or
 - (b) an order pursuant to CPR 3.1(2)(a) extending the time limited for serving the claim form.
4. In the light of the Court of Appeal’s decision in *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWCA Civ 355 (“*Good Law Project*”), the claimant does not contend that I should make an order pursuant to CPR 3.1(2)(a) extending the time limited for serving the claim form. However, since the Supreme Court has granted permission to appeal in *Good Law Project*, the claimant wishes to preserve its position in case the Supreme Court’s judgment effects a change in the relevant law as stated by the Court of Appeal. Accordingly, I will dismiss the application insofar as it seeks an order pursuant to CPR 3.1(2)(a) extending the time limited for serving the claim form.
5. The council and Esteban have each issued application notices, but those applications do not require separate consideration, since the relief sought is:
 - (1) the dismissal of the claimant’s application; and

- (2) an order (which is not controversial) spelling out the consequences of my decision on the claimant's application, i.e. either:
 - (a) if I dismiss the claimant's application, an order dismissing the claim; or
 - (b) if I allow the claimant's application, an order extending the time limited for filing acknowledgments of service.

(2) Background

(2)(a) The Planning Permission

6. The claimant operates a waste and recycling facility on land adjacent to the land ("the Longmoor site") to which the planning permission relates. The nature and the intended benefits of the proposed development of the Longmoor site and of an adjacent site were described as follows in the planning officer's report:

"The development of the Longmoor site will not only provide up to 510 new homes (30% affordable) and 5,000 sq.m of commercial/community space but will also act as an enabling form of development for the proposal at land west of Ashton Gate Stadium site known as the Ashton Gate Sporting Quarter (AGSQ).

Both applications are submitted in tandem by the same applicant, with the latter providing a Sport and Convention Centre (SCC), together with 125 residential units, office block, hotel, multi storey car park, hard and soft landscaping (...).

The net proceeds of sale that would arise from the sale of the Longmoor site with outline planning permission are to be used to part finance the AGSQ development. The funds (approx. £24.1million) are to be placed into an Escrow account controlled by [the council], with funds only being released at key stages of the completion of the proposed SCC.

...

The following report sets out that the benefits that derive from the proposed development are considered by Officers to significantly and demonstrably outweigh the issues raised by members of the public and other key stakeholders.

These include a significant contribution to housing supply (approx. 510 units with 30% being affordable), employment opportunities associated with the proposed commercial space, the enabling of the SCC which delivers a city-wide community benefit, improvements to local walking and cycling linkages, a Biodiversity Net Gain and blue/green infrastructure improvements around the site."

7. The claimant does not dispute that the proposed development would have these benefits, but contends that the decision to grant the planning permission was unlawful by reason of alleged errors in considering, in particular, the issue of noise at the Longmoor site, including noise generated by the claimant's operations, and the effect of the proposed development on the claimant's operations by reason of condition 15 to the planning permission for the construction of the claimant's facility, which

restricts the rating level of any noise generated by plant and equipment to at least 4dB below the background level. The claimant contends that the proposed development would have the effect of making this condition more stringent, to the extent that the claimant could not comply with it, at least without significant new and expensive mitigation measures.

(2)(b) Pre-Action Correspondence

8. On 13 September 2023 the claimant’s solicitor, Amanda Sutherland, of Sutherland Property and Legal Services Limited, sent a letter before action to the council and to Esteban, setting out five grounds on which the claimant contended that the grant of the planning permission was unlawful. On Wednesday 27 September 2023 the council and Esteban’s solicitors, Clarke Willmott LLP (“Clarke Willmott”), sent their responses to the letter before action, setting out why they considered that the proposed claim was unarguable.
9. It is relevant to note at this stage that:
 - (1) The council’s letter said nothing about how the council would be prepared to receive service of any claim form.
 - (2) Esteban’s letter, which was sent by Clarke Willmott, stated, in paragraph 4 on the first page, that “Our address for service is:” and then gave Clarke Willmott’s postal address.
 - (3) Moreover, the letter concluded, just above Clarke Willmott’s signature on the eighth page, as follows:

“Address for further correspondence and service of court documents

45. See paragraph 4 above.”
 - (4) Just below Clarke Willmott’s signature was the email address of Neil Baker, the solicitor at Clarke Willmott dealing with this matter.

(2)(c) Attempts to File the Claim Form

(2)(c)(i) Tuesday 3 October 2023

10. As I have said, the claim form had to be filed by Tuesday 3 October 2023. Ms Sutherland did not attempt to file the claim form until the afternoon of 3 October 2023. The claimant has not filed any evidence to explain why the claim form was not filed earlier.
11. Nor is there any evidence from the claimant that Ms Sutherland considered any of the rules, practice directions or guidance concerning the filing of claim forms before she attempted to file the claim form in the present case. There is evidence, as will be seen, that she had had experience of using the Document Upload Centre in a different case in November 2022, but there is no evidence that she considered using the Document Upload Centre as a means of filing the claim form in the present case before she attempted to file it by email.

12. At 12.50 pm on 3 October 2023 Ms Sutherland’s PA, Jessica Lomax, sent an email to the Administrative Court Office’s general office email address in which she stated:

“Please find attached judicial review by our clients ETM Contractors Ltd against the decision of BCC to grant planning consent to Esteban Investments Ltd. Please find attached;

- Claim form
- Statement of facts and grounds
- Court bundle

Please advise court application fee and method of payment.”

13. The email did not in fact attach the three documents listed, but instead contained hyperlinks to those documents. The statement of facts and grounds was a Word document and the other two were in PDF format. However, the court was unable to open these documents. I assume that this is because, for security reasons, the court’s computer system is configured so as to prevent access to hyperlinked documents. The claimant accepts that the claim form was not filed by way of the email sent on 3 October 2023.

14. The statement of facts and grounds was 22 pages long, compared to 7 pages for the letter before action. The statement of facts and grounds contained three grounds on which it was contended that the decision to grant the planning permission was unlawful. These grounds overlapped with, but were by no means identical to, some of the five grounds set out in the letter before action.

15. By an email timed at 1.43 pm a court officer replied as follows:

“Thank you for your email, Please note that we have not been able to review the documents attached to this email. Please note that the court accepts documents that are in Word or PDF format only. Please resubmit your documents ensuring that you attach them so that they appear at the top of the email rather than in the body.”

16. It will be noted that:

- (1) This email referred to “the documents attached to” Ms Lomax’s email of 3 October 2023, whereas in fact there were no documents attached to that email, which instead contained hyperlinks to the documents.
- (2) This email suggested that the documents were in the wrong format, when in fact they were in Word and PDF format.

17. The email also included the following standard wording:

“In accordance with Practice Direction 5B - Electronic communication and filing we ask you to do the following when sending an e-mail message to the court:

- Clearly state the Court's action number, parties’ names and any dates relating to an up-coming hearing in the subject header.

- In accordance with Practice Direction 3.3a, please do not submit documents which carry a payable fee; such e-mails will be deleted.
- We do not accept documents over 50 pages by electronic means.”

18. The appropriate court fees were paid at 2.22 and 2.25 pm.

19. Ms Lomax did not know how to respond to the court’s email. She was unable to contact Ms Sutherland, who was on leave, attending to a personal matter, and uncontactable. It appears that there was no other lawyer in the firm. As a result, the claimant’s solicitor took no further action on 3 October 2023 in response to the email from the court.

(2)(c)(ii) Wednesday 4 October 2023

20. There followed correspondence between Ms Sutherland or Ms Lomax and the court between 4 and 11 October 2023. In response to an email from Ms Lomax, a court officer said as follows in an email sent at 10.20 am on 4 October 2023:

“Unfortunately we are unable to open the documents again, as stated in the previous my colleague stated the court only accepts Word or PDF formats only and I can see here that the file attached is not either of them.

Please do resend the documents in the correct format so that we are able to process the applications.”

21. This email again referred to “the file attached” and again suggested that the documents which Ms Lomax was seeking to file were in the wrong format. However, it appears that Ms Sutherland appreciated the true nature of the problem. As she said in an email sent at 5.11 pm:

“I suspected the issue was that whenever files are attached that exceed a certain size, the system automatically converts to providing a link. As a result, Jess attached them separately to overcome this issue.”

22. Ms Lomax split the “court bundle” into a series of smaller PDF files and sent these to the court at 1.56 pm. However, in an email sent at 3.23 pm on 4 October 2023 a court officer said:

“Thank you for your email. The documents have been attached in the body of the email as external links and cannot be opened. Please reattach them at the top of the email using the attach file function.”

23. In her reply, sent at 3.27 pm, Ms Lomax said that she had done that and asked if she was able to upload the documents in a different way. In addition, Ms Sutherland said as follows in her email sent at 5.11 pm on 4 October 2023:

“It appears that this still hasn’t worked. In the past with large files we have been provided with a separate email address that can handle larger files – can you advise whether this is still available or whether there is another option to be able to ensure these files are safely with you?”

(2)(c)(iii) Thursday 5 October 2023

24. A court officer said in an email sent at 10.44 am on 5 October 2023 that Ms Sutherland could send the documents by post or attend court in person and place them in the dropbox. No mention was made of the Document Upload Centre.
25. The same court officer then sent emails to Ms Lomax and Ms Sutherland at 10.47 and 10.49 am saying that Ms Lomax had attached the documents as required to an email sent on 4 October 2023. This was followed by an email sent at 11.01 am in which the same court officer said as follows:
- “Thank you for your email, we have received a few emails from you with attachments. We have not been able to process this Judicial Review for the following reasons:
- The fee of 154 is required at the time the application is filed.
 - We have not been able to locate the decision from Bristol City Council dated 22/10/2023.
 - Please also note that the Administrative Court Office requires the documents to be filed in one compliant bundle with a hyperlinked index page. Please find attached the Administrative Court Office guidance for your attention.”
26. As to this email:
- (1) The fee of £154 had been paid on 3 October 2023.
 - (2) The Council’s decision was one of the documents which had been sent to the court.
 - (3) Ms Sutherland did not confirm in her witness statement either that a document was attached to this email or, if so, which document was attached to this email. However:
 - (a) I infer that it is more likely than not that a document was attached to this email, since Ms Sutherland did not respond by saying that the attachment was missing.
 - (b) I also infer that it is more likely than not that the document attached to this email was the document entitled “Administrative Court: Information for Court Users” (“the Information for Court Users”) dated 27 June 2022, which appeared at Annex 7 to the Administrative Court Judicial Review Guide 2023 and also as a stand-alone document on the Administrative Court’s web-page. As will be seen, the Information for Court Users refers clearly to the Document Upload Centre.
27. A further email from Ms Sutherland prompted the following reply from a court officer at 3.54 pm on 5 October 2023:
- “Thank you for your email. Please email the documents in one compliant PDF bundle. I was able to review all the documents that were in PDF but not the images. I would suggest that the documents are compiled into one bundle and

converted into one PDF document. The only other option that you have is to send them by post. I am afraid that there is nothing else that we can do on our part.”

28. It is not clear what the court officer meant by “the images”. Again, no mention was made in this email of the Document Upload Centre.

(2)(c)(iv) Friday 6 October 2023

29. Ms Sutherland sent an email at 9.55 am on 6 October 2023 complaining about how the matter had been handled by the court. After further exchanges of emails, a senior administrator sent an email to Ms Sutherland at 1.33 pm, stating, inter alia, that the court could not accept external internet links to documents and attaching what was described as “the current ACO Guidance for submitting applications”, which I infer was the Information for Court Users.
30. Ms Sutherland replied at 1.44 pm, asserting (incorrectly) that she had complied with the guidance. The senior administrator replied at 3.02 pm, repeating, inter alia, that the court could not accept external links to documents and requesting a single PDF bundle in accordance with the “attached guidance”, which I again infer was the Information for Court Users.
31. In an email sent at 5.02 pm Ms Sutherland said that in a case in 2022 the court had referred her to the Document Upload Centre and asked why that was no longer an option.

(2)(c)(v) Monday 9 to Wednesday 11 October 2023

32. In an email sent at 3.46 pm on Monday 9 October 2023 a court officer told Ms Sutherland that she would be sent a link to upload her application to the Document Upload Centre. The link was provided on 10 October 2023 and Ms Lomax uploaded the claim form and related documents. The claim form was issued on 11 October 2023.
33. The claim form as issued included, in section 9, an application for an extension of the time limited for filing the claim form, on the grounds that:
- “Application submitted in time but due to problems with IT at the court, it was not actioned/downloaded in time – see attached correspondence.”

34. The claimant no longer asserts that the claim form was filed in time. Nor does the claimant assert that there were any problems with IT at the court. Ms Sutherland appears to have been under the impression that there were such problems, but the real issue appears to have been that the court’s computer system did not permit the use of hyperlinks to access documents, presumably, as I have said, for security reasons.

(2)(e) Willingness to Accept Service by Email

35. The council’s website gave a postal address for the service of claims and also set out the email address of the council’s legal services department. The council accepted that this amounted to an indication that it was willing to accept service by email at that email address.

36. Neither Esteban nor Clarke Willmott had, before 11 October 2023, indicated to the claimant that they were willing to accept service of documents by email. Indeed, Clarke Willmott had given its postal address as its address for service in its response to the letter before action.

(2)(f) The Attempt to Serve the Claim Form

37. The claim form was issued on 11 October 2023. There is no evidence that Ms Sutherland considered any of the rules or practice directions concerning service before attempting to serve the claim form.
38. Ms Sutherland attempted to serve the claim form and supporting documents by email on 11 October 2023. Before doing so, however, she did not ask the council or Clarke Willmott the question which she was required to ask by paragraph 4.2 of Practice Direction 6A, namely, “whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).”
39. Ms Sutherland attempted to serve the claim form as follows. At 5.21 pm she sent an email to Roy William Pinney, the planning lawyer employed by the council who was dealing with this matter (and whose name had appeared at the end of the Council's response to the letter before action), and to Mr Baker of Clarke Willmott. The email to Mr Pinney was sent to Mr Pinney's email address, which was not the email address given on the council's website for service of documents.
40. The email contained a hyperlink to a document (“the claim bundle”). However:
- (1) The claim bundle did not contain a copy of the sealed claim form. Ms Sutherland sent this to Mr Pinney and to Mr Baker as an attachment to a subsequent email sent at 5.28 pm.
 - (2) Esteban's evidence is that the claim bundle was opened on 12 October 2023 by an associate at Clarke Willmott, Kelly Rowley, and that it consisted of 439 pages and did not include the statement of facts and grounds.
 - (3) The council's evidence is that, when Mr Pinney opened the claim bundle on 12 October 2023, it contained 469 pages, with the statement of facts and grounds at pages 440 to 469 (using the electronic page numbering).
 - (4) There was a dispute as to how it came about that the claim bundle was different when Mr Pinney opened it from when Ms Rowley opened it, but the fact of that difference was not challenged by the claimant and could not be explained by the claimant.
41. An “out of office” email was automatically sent on Mr Baker's behalf to Ms Sutherland at 5.25 pm on 11 October 2023. The standard form of words at the end of the email ended with the following:
- “Clarke Willmott LLP does not accept service of proceedings by email.”
42. Esteban's evidence is that Clarke Willmott did not receive the statement of facts and grounds until 19 October 2023, when the council sent a copy to Clarke Willmott.

43. On 23 October 2024 Clarke Willmott wrote to Ms Sutherland to say that the claim form had been both issued and served out of time and to invite the claimant to withdraw the claim. This prompted the following action:

- (1) The claim form and supporting documents were served by post, received by Clarke Willmott on 25 October 2023 and by the council on 27 October 2023.
- (2) Meanwhile, the claimant issued its application on 26 October 2023.

(3) The Law

(3)(a) The Requirement to File the Claim Form in Time

44. CPR 54.5(5) provides that:

“Where the application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed not later than six weeks after the grounds to make the claim first arose.”

45. CPR 54.6(2) provides that:

“The claim form must be accompanied by the documents required by Practice Direction 54A.”

46. The relevant paragraphs of Practice Direction 54A are:

- (1) paragraph 4.1, which provides that a claimant seeking permission to apply for judicial review must ensure that the claim form sets out all material facts, “that is all those facts which are relevant to the claim ... being made”;
- (2) paragraph 4.2, which provides that the claim form must include or be accompanied by the statement of facts and the statement of grounds, which may be contained in a single document;
- (3) paragraph 4.3, which provides that any application to extend the time limit for filing the claim form should be included in the claim form or contained in a document which accompanies it; and
- (4) paragraph 4.4(1), which lists other documents which must accompany the claim form, subject to paragraph 4.4(2), which provides as follows:

“Where it is not possible to file all the above documents, the claimant must indicate which documents have not been filed and the reasons why they are not currently available.”

47. It is clear from these words that a claim form can be filed even though it is not accompanied by some or all of the documents listed in paragraph 4.4(1) of Practice Direction 54A. By contrast, it was not disputed before me that the statement of facts and the statement of grounds (or the statement of facts and grounds) are essential parts of the claim form, without which the claim form cannot validly be filed or served.

(3)(b) The Manner of Filing the Claim Form

(3)(b)(i) Paragraph 4.5 of Practice Direction 54A

48. Paragraph 4.5 of Practice Direction 54A provides as follows:

- “(1) The claimant must prepare a paginated and indexed bundle containing all the documents referred to in paragraphs 4.2 and 4.4. An electronic version of the bundle must also be prepared in accordance with the Guidance on the Administrative Court website.
- (2) The claimant shall (unless otherwise requested) lodge the bundle with the Court in both electronic and hard copy form. ...”

49. As to these provisions:

- (1) The requirement in the first sentence of paragraph 4.5(1) for a single paginated and indexed bundle containing all of the documents accompanying the claim form was, as has been seen, referred to in some of the emails sent in the present case.
- (2) As I understand it, the guidance referred to in the second sentence of paragraph 4.5(1) is now, and was in October 2023, the Information for Court Users.
- (3) The court did not in the present case (and, so far as I am aware, does not generally) insist on compliance with the requirement in the first sentence of paragraph 4.5(2) that the claimant must lodge the bundle in both electronic and hard copy form.

(3)(b)(ii) The Information for Court Users

50. The Information for Court Users consists of 8 sections, A to H. It is stated in the introduction that compliance with section A is required by Practice Direction 54A. Section A includes the following:

“Electronic bundles must be prepared as follows and be suitable for use with all of Adobe Acrobat Reader and PDF Expert and PDF Xchange Editor.

- 1) A bundle must be a single PDF.
- ...
- 3) If the papers in support of any claim or appeal or non-urgent application exceed 20mb, the party should file:
 - (a) a core bundle (no larger than 20mb) including, as a minimum, the Claim Form and Grounds or Notice of Appeal and Grounds, or Application Notice and Grounds; documents regarded as essential to the claim, appeal, or application (for example the decision challenged, the letter before claim and the response, etc.); any witness statements (or primary witness statement) relied on in support of the claim, appeal or application; and a draft of the order the court is asked to make; and

- (b) a further bundle containing the remaining documents

Bundles should be filed using the Document Upload Centre.

- 4) All bundles must be paginated in ascending order from start to finish.
...
6) The index page must be hyperlinked to the pages or documents it refers to.”

“Any application filed by a legal representative that does not comply with the above rules on electronic bundles may not be considered by a Judge. ...”

51. Section B of the Information for Court Users is headed “Document Upload Centre”. It says as follows (omitting footnotes):

“Whenever possible, file documents electronically. This includes claims, responses, interlocutory applications, and hearing bundles. Unless stated otherwise below, file documents using the Document Upload Centre (DUC).

Requests to upload documents to the DUC should be sent to the email addresses referred to below in Sections D, E and F. After uploading a document, you must email the relevant court office to confirm the upload.

For guidance on how to use the DUC, see the HMCTS “Professional Users Guide” for detailed information about the Document Upload Centre, and the DUC video guide on YouTube.”

52. Section D of the Information for Court Users is headed “Non-urgent work: civil claims and appeals”. The introduction to section D states as follows:

“All other civil business (i.e. non-urgent claims, appeals and applications) should be filed electronically (preferred wherever possible) or by post or DX. ... It remains the responsibility of the party making an application or claim to ensure that it is filed within the applicable time limit.”

53. Section D then goes on to state as follows:

“1) Wherever possible, claims for judicial review, ... are to be filed electronically using the Document Upload Centre.

2) Requests to upload documents should be sent
for London cases to: [an email address]

...

You will receive an invitation by email to upload your documents. You should then upload the claim/appeal/application bundle (prepared in accordance with Section A).”

“5) All electronic bundles must be prepared/formatted in accordance with the guidance at Section A.”

(3)(b)(iii) CPR 5.5(1) and Practice Direction 5B

54. CPR 5.5(1) provides as follows:

“A practice direction may make provision for documents to be filed or sent to the court by –

- (a) facsimile; or
- (b) other electronic means.”

55. Paragraphs 2.1 and 2.2 of Practice Direction 5B provide as follows:

“2.1 Subject to paragraphs 2.2 and 2.3, a party may e-mail the court and may attach or include one or more specified documents to or in that e-mail.

2.2 In the High Court—

- (a) a party must not e-mail an application or other document to the court where a fee is payable for that document to be filed with the court; and
- (b) the length of any attachments and total size of an e-mail must not exceed the maximum which the appropriate court office has indicated it can accept.”

56. Paragraph 2.4(a) of Practice Direction 5B provides as follows:

“The court may refuse to accept any application or other document, including any attachment, e-mailed to the court where—

- (a) the sender has not complied with paragraph 2.2;”

57. Paragraphs 3.2 to 3.5 of Practice Direction 5B provide as follows:

“3.2 Subject to paragraph 3.3, correspondence and documents may be sent as either text in the body of the e-mail, or as one or more attachments.

3.3 Completed forms that are prescribed by a rule or practice direction must be sent as attachments.

3.4 Where a prescribed form requires that one or more documents must be attached to that form, that document or documents must be attached to the e-mail to which the form is attached.

(Court forms may be downloaded from HMCTS website at: <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>)

3.5 Attachments must be sent in a format supported by the software used by the court office to which it is sent. The format or formats which may be used in sending attachments to a particular court office are listed in the e-mail guidance.”

58. Paragraph 1.3(a) of Practice Direction 5B states that the “email guidance” can be found at <https://www.justice.gov.uk/courts/email-guidance#canfile>. In fact, however, that internet address does not link to a web-page.

(3)(c) Extending the Time for Filing the Claim Form

59. CPR 3.1(2)(a) provides as follows:

- “(2) Except where these Rules provide otherwise, 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);”

60. On the other hand, subsections 31(6) and (7) of the Senior Courts Act 1981 provide as follows:

- “(6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant —

- (a) leave for the making of the application; or
- (b) any relief sought on the application,

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

- (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.”

61. The principles to be applied when considering whether or not to extend the time for filing a claim form seeking permission to apply for judicial review of a planning decision were set out by the Court of Appeal in paragraph 21 of its judgment in *R (Thornton Hall Hotel Ltd) v Wirral Metropolitan Borough Council* (2019] PTSR 1794 (“*Thornton Hall Hotel*”), a case in which the claim form was filed over 5½ years after the planning permission was granted. I have taken account of the whole of paragraph 21, but I do not propose to quote it in full. It includes the following:

- “(1) When a grant of planning permission is challenged by a claim for judicial review, the importance of the claimant acting promptly is accentuated. The claimant must proceed with the “greatest possible celerity”- because a landowner is entitled to rely on a planning permission granted by a local planning authority exercising its statutory functions in the public interest: see Simon Brown J in *R v Exeter City Council, Ex p JL Thomas & Co Ltd* [1991] 1 QB 471, 484G; and in *R v Swale Borough Council, Ex p Royal Society for the Protection of Birds* [1991] 1 PLR 6. ...
- (2) When faced with an application to extend time for the bringing of a claim, the court will seek to strike a fair balance between the interests of the developer and the public interest: see Sales LJ in *Gerber’s case* [2016] 1 WLR 2593, para 46. ...

When planning permission has been granted, prompt legal action will be required if its lawfulness is to be challenged, “unless very special reasons can be shown”: *Gerber’s case*, para 49.”

- “(4) What is required to satisfy the requirement of promptness “will vary from case to case”, and “depends on all the relevant circumstances”. If there is a “strong case for saying that the permission was ultra vires”, the court “might in the circumstances be willing to grant permission to proceed”, but “given the delay, it requires a much clearer-cut case than would otherwise have been necessary”: see Keene LJ in *Finn-Kelcey’s case* [2009] Env LR 17, paras 25–29.”
- “(7) The court’s discretion under section 31(6)(b) requires an assessment of all relevant considerations, including the extent of hardship or prejudice likely to be suffered by the landowner or developer if relief is granted, compared with the hardship or prejudice to the claimant if relief is refused, and the extent of detriment to good administration if relief is granted, compared with the detriment to good administration resulting from letting a public wrong go unremedied if relief is refused: see, generally, Lord Goff of Chieveley in *R v Dairy Produce Quota Tribunal for England and Wales, Ex p Caswell* [1990] 2 AC 738; and Sales LJ in *Gerber’s case* [2016] 1 WLR 2593, paras 59 and 60, and 64–69. The concept of detriment to good administration is not tightly defined, but will generally embrace the length of the delay in bringing the challenge, the effect of the impugned decision before the claim was issued, and the likely consequences of its being reopened: see Sales LJ in *Gerber’s case*, para 62. Each case will turn on its own particular facts and an evaluation of all the relevant circumstances: see Schiemann LJ in *Corbett’s case* [2001] JPL 1415, paras 24 and 25; and Hobhouse LJ in *Ex p Oxby* [1998] PLCR 283, 298, 299, 302 and 303.”

62. What Lord Goff of Chieveley said about good administration in *R v Dairy Produce Quota Tribunal for England and Wales, Ex p Caswell* [1990] 2 AC 738 is as follows:

“I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision. Matters of particular importance, apart from the length of

time itself, will be the extent of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened.”

(3)(d) The Time for Serving the Claim Form

63. CPR 54.7 provides as follows:

“The claim form must be served on –

- (a) the defendant; and
- (b) unless the court otherwise directs, any person the claimant considers to be an interested party,

within 7 days after the date of issue.”

(3)(e) The Manner of Serving the Claim Form

64. CPR 6.3(1)(d) provides as follows:

“A claim form may be served by any of the following methods –

...

- (d) fax or other means of electronic communication in accordance with Practice Direction 6A;”

65. Paragraph 4.1 of Practice Direction 6A provides as follows:

“Subject to the provisions of rule 6.23(5) and (6), where a document is to be served by fax or other electronic means –

- (1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –
 - (a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and
 - (b) the fax number, e-mail address or e-mail addresses or other electronic identification to which it must be sent; and
- (2) the following are to be taken as sufficient written indications for the purposes of paragraph 4.1(1) –

...

- (b) an e-mail address or e-mail addresses set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address or e-mail addresses may be used for service; or
- (c) a fax number, e-mail address or e-mail addresses or electronic identification set out on a statement of case or a response to a claim filed with the court.”

66. I have already referred to paragraph 4.2 of Practice Direction 6A, which provides as follows:

“Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient’s agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).”

(3)(f) Extending the Time for Serving the Claim Form

67. In *Good Law Project* the Court of Appeal considered the question whether an application for an extension of the time limited for serving the claim form in a judicial review case which was made after the expiry of the time limit was governed by CPR 3.1(2)(a) or by CPR 7.6, which provides as follows:

- “(1) The claimant may apply for an order extending the period for compliance with rule 7.5.
- (2) The general rule is that an application to extend the time for compliance with rule 7.5 must be made –
 - (a) within the period specified by rule 7.5; or
 - (b) where an order has been made under this rule, within the period for service specified by that order.
- (3) 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.”

68. The Court of Appeal decided that CPR 7.6 does not apply directly to an application for the extension of the time limited for service of the claim form in a judicial review case made after the expiry of the time for service, but that its principles are to be followed on such an application under CPR 3.1(2)(a), with the result that the time for service of the claim form should not be extended unless the claimant has taken all reasonable steps to comply with CPR 54.7, but has been unable to do so.

69. That is why the claimant accepted that I should dismiss its application for an order pursuant to CPR 3.1(2)(a) extending the time limited for serving the claim form, since the claimant accepted that it had not taken all reasonable steps to comply with CPR 54.7.

(3)(g) Alternative Service of the Claim Form

70. CPR 6.15 provides as follows:

- “(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part,

the court may make an order permitting service by an alternative method or at an alternative place.

- (2) On an application under this rule, the court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.”

71. The principles applicable to an application for an order under CPR 6.15(2) were summarised as follows by Carr LJ in paragraph 55 of her judgment in *Good Law Project* (after referring to *Barton v Wright Hassall LLP* [2018] 1 WLR 1119):

“The following summary suffices for present purposes:

- (i) The test is whether in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant are good service;
- (ii) Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served. This is a critical factor. But the mere fact that the defendant knew of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under CPR r 6.15(2);
- (iii) The manner in which service is effected is also important. A “bright line” is necessary to determine the precise point at which time runs for subsequent procedural steps. Service of the claim form within its period of validity may have significant implications for the operation of any relevant limitation period. It is important that there should be a finite limit on the extension of the limitation period;
- (iv) In the generality of cases, the main relevant factors are likely to be:
 - (a) Whether the claimant has taken reasonable steps to effect service in accordance with the rules;
 - (b) Whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired;
 - (c) What, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.

None of these factors are decisive in themselves, and the weight to be attached to them will vary with all the circumstances. (See *Barton* at paras 9, 10 and 16.)”

72. I note also the following passages from Carr LJ’s judgment in *Good Law Project*:

“17. It is neither possible nor appropriate to take any view on the merits. The most that can be said at this stage is that the claim may be arguable. If the appeal succeeds, the question of permission will fall to be considered in the normal way under CPR r 54.4.”

“38. There are two broad contextual points to identify at the outset: first, the need for promptness and speed in judicial review claims generally, and

procurement challenges in particular; and secondly, the importance of valid service of claim forms.

39. The need for promptness in judicial review claims is well-known. Good public administration requires finality. Public authorities need to have certainty as to the validity of their decisions and actions (see for example *R (Law Society of England and Wales) v Legal Services Commission* [2011] Costs LR Online 57, para 116). As for the procurement context, it is in the public interest that challenges to the tender process of a public service contract are made promptly. The tight time limits imposed are the result of balancing two competing interests: the need to allow challenges to be made to an unlawful tender process and the need to ensure that any such challenges are made expeditiously (see for example *Jobsin Co UK plc (trading as Internet Recruitment Solutions) v Department of Health* [2002] 1 CMLR 44, para 33).

...

41. As for the importance of valid service, service of a claim form can be distinguished from other procedural steps. It performs a special function: it is the act by which the defendant is subjected to the court's jurisdiction. This quality is reflected in the terms of CPR r 7.6, with its very strict requirements for any retrospective extension of time. Equally, reliance on non-compliant service is not one of the instances of opportunism deprecated by the courts (see for example *Woodward v Phoenix Healthcare Distribution Ltd* [2019] EWCA Civ 985 ("*Woodward*") at [48]). The need for particular care in effecting valid service, particularly when there are tight time limits and/or a claimant is operating towards the end of any relevant limitation period, is self-evident."
- "57. Provided that a defendant has done nothing to put obstacles in the claimant's way, a potential defendant is under no obligation to give any positive assistance to the claimant to serve. The potential defendant can sit back and await developments (see, albeit in the context of CPR r 7.6, *Sodastream Ltd v Coates* [2009] EWHC 1936 (Ch) at [50(9)]). Thus, there is no duty on a defendant to warn a claimant that valid service of a claim form has not been effected (see *Barton* at para 22 and *Woodward* [2019] EWCA Civ 985 at [44]-[47])."
- "63. Further, the absence of any proper explanation as to how the mistaken view that service of an unsealed claim form could amount to valid service came about (as set out above), or who (and how many) formed it, does not advance Good Law's cause. There was no attempt to serve the sealed claim form on the correct address within time. The level of care required cannot be divorced from the significance of the procedural step in question. Thus, service of a claim form requires the utmost diligence and care to ensure that the relevant procedural rules are properly complied with. In the event, this was serious carelessness. The Judge was entitled to lay heavy weight on this consideration. As she said, the SSHSC had made the authorised address for service "very clear"."

- “83. The procedural rules as to service are clear, as was the SSHSC’s nominated address for service. Compliance with the rules is part of the overriding objective in CPR r 1.1. The availability of e-mail communications does not lessen the importance of strict compliance, although it may mean that even greater care when it comes to service formalities needs to be taken. It is important to emphasise (again) that valid service of a claim form is what founds the jurisdiction of the court over the defendant. Parties who fail, without good reason, to take reasonable steps to effect valid service, in circumstances where a relevant limitation period is about to expire, expose themselves to the very real risk of losing the right to bring their claim.
84. The consequences of the error in service may seem harsh in circumstances where the sealed claim form was sent to the SSHSC’s lawyers within time. But as the authorities demonstrate, CPR r 6.15 is not a generous provision for claimants where there are no obstacles to valid service of a claim form within time. The power to validate will not necessarily be exercised even when the defendant, either itself or through its solicitors, is fully on notice within time and the only prejudice to the defendant would be the loss of an accrued limitation defence.”

(4) The Application for an Extension of Time for Filing the Claim Form

(4)(a) The Claimant’s Submissions

73. It was accepted on behalf of the claimant that:
- (1) Ms Sutherland should have used the Document Upload Centre to file the claim form and accompanying documents, as required by section B of the Information for Court Users.
 - (2) The claim form was not validly filed until it was uploaded to the Document Upload Centre on 10 October 2023.
 - (3) Practice Direction 5B permits the filing of documents by email, but not by way of a hyperlink in an email: see paragraphs 2.1 and 3.2 of Practice Direction 5B.
 - (4) There was a degree of carelessness on the part of Ms Sutherland.
74. It was also accepted on behalf of the claimant that the court bundle which Ms Sutherland sought to file by email was longer than 50 pages, contrary to paragraph 2.2(b) of Practice Direction 5B, but it was submitted that:
- (1) paragraph 2.4(a) conferred a discretion on the court to refuse to accept a document emailed to the court where the sender had not complied with paragraph 2.2; but
 - (2) the court did not exercise that discretion in the present case, since none of the emails from court officers referred to this as a reason for not processing the claim from.

75. In support of the claimant's application, it was submitted that:
- (1) There was a delay of only a few days in filing the claim form.
 - (2) Ms Sutherland and Ms Lomax were diligent in seeking to remedy the problem with filing once it arose.
 - (3) However, they received mixed messages from the court.
 - (4) While extending time would cause prejudice to the council and to Esteban in the sense that it would deprive them of a limitation defence, it would not cause them any additional prejudice. For instance, Esteban had not begun the development permitted by the planning permission.
 - (5) By contrast, refusing to extend time would cause prejudice to the claimant (and, therefore, to the public interest) because the permitted development would have a significant adverse effect on the claimant's operations.
 - (6) The potential prejudice to the claimant outweighed the prejudice to the council and to Esteban.
 - (7) There is a detriment to good administration in allowing public wrongs to go unremedied.
76. In relation to the fifth of these submissions, I enquired as to the evidence of the potential prejudice to the claimant. I was told that that evidence was to be found in paragraphs 58 and 60 of the statement of facts and grounds, where it is asserted that it is the view of the claimant's expert witness that the permitted development would make the claimant's continued compliance with condition 15 of its planning permission "unachievable (at least without new significant, expensive mitigation at the [claimant's] site)." I was not directed to any part of any expert's report in this respect.
77. It was not submitted on behalf of the claimant that this is a case in which the merits of the proposed judicial review are so strong that their strength is a factor to be taken into account in considering the application for an extension of time.

(4)(b) The Council's and Esteban's Submissions

78. On behalf of the council and Esteban it was submitted that:
- (1) There is a particular need for procedural rigour in planning cases. Holding up permitted developments is prejudicial to good administration. The 6 week period for filing the claim form is shorter than in other judicial review cases. There is no discretion to extend the 6 week period for commencing planning appeals.
 - (2) Ms Sutherland left it to the last day to attempt to file the claim form.
 - (3) She had had previous experience of the Document Upload Centre, but had not made a request to upload documents in this case.

- (4) The failure to file the claim form and accompanying documents correctly on 3 October 2023 was a serious error.
- (5) On 5 and 6 October 2023 the court referred Ms Sutherland three times to the Information for Court Users, yet the claim form was not filed until 10 October 2023.
- (6) There is no evidence of the alleged prejudice to the claimant. In any event, the planning permission is only an outline planning permission and issues relating to noise can be dealt with later in the planning process.
- (7) The proposed development is in the public interest, for the reasons set out in the officer's report, and any delay to the proposed development would be contrary to the public interest,

(4)(c) Decision

(4)(c)(i) The Reasons for Late Filing

79. I start with the reasons why the claim form was not filed in time:

- (1) For reasons which have not been explained, Ms Sutherland waited until 12.50 pm on 3 October 2023 before attempting to file the claim form.
- (2) There is no evidence that Ms Sutherland made, and I infer that she did not make, any effort to consult the relevant provisions of the Practice Directions or the Information for Court Users in order to ascertain how the claim form should be filed.
- (3) Although she had used the Document Upload Centre before, she made no attempt to use the Document Upload Centre on this occasion. In accordance with section B of the Information for Court Users, that would have required her to make a request to upload documents to the Document Upload Centre. She made no such request.
- (4) She attempted to file the claim form and accompanying documents by way of hyperlinks in an email, whereas paragraphs 2.1 and 3.2 of Practice Direction 5B require documents filed by email to be attached to or included in an email, which clearly excludes hyperlinks.
- (5) It may be that Ms Sutherland's firm's computer system automatically converted proposed attachments of a certain size to hyperlinks, but it was her responsibility to be aware of her firm's arrangements for sending documents by email.
- (6) Having attempted to file the claim form at 12.50 pm on 3 October 2023, Ms Sutherland was on leave and uncontactable for the remainder of the day, which meant that there was no lawyer available to consider and take action in the light of the court's email of 1.43 pm.

80. This conduct on the part of the claimant's solicitor fell far short of the "utmost diligence and care" which was required, adopting the words used in paragraph 63 of

Carr LJ's judgment in *Good Law Project* and applying them to the filing as well as the service of the claim form.

81. For the sake of completeness, I note, but do not rely on, the following points concerning Practice Direction 5B:
- (1) Contrary to paragraph 2.2(a) of Practice Direction 5B, Ms Sutherland emailed to the court a document where a fee was payable for that document to be filed with the court. However, the court appears to have been willing to overlook this point, although it could, in itself, have led to the rejection of the attempted filing of the claim form.
 - (2) I make no finding in relation to paragraph 2.2(b) of Practice Direction 5B. That is because I was not shown any way in which Ms Sutherland could have read, in advance of attempting to file the claim form, that the Administrative Court had indicated that it could not accept by email documents longer than 50 pages.
 - (3) Although this point was not raised before me, it appears that filing the claim form by hyperlink was also contrary to paragraph 3.3 of Practice Direction 5B, since a judicial review claim form (Form N461) is a form prescribed by a rule, namely CPR 4(1).
82. I have taken account of the criticisms made of the court's email of 1.43 pm, namely that it referred to "the documents attached" when the real problem was that the documents were not attached and it suggested that the documents were in the wrong format, when they were not. It is the duty of the claimant, and not the court, to inform itself as to how to file the claim form and accompanying documents. However, an inaccurate or misleading statement by the court is a factor which can be taken into account on an application such as the present. Having said that, the court's email of 3 October 2023 had no causative effect on that day, since Ms Sutherland was uncontactable and did not consider it before the time for filing the claim form had elapsed.
- (4)(c)(ii) 4 to 10 October 2023*
83. I turn next to the period from 4 to 10 October 2023, when the claim form was filed. I bear in mind that the claim form was filed only 7 days late, which is very different from, for example, the 5½ years' delay under consideration in *Thornton Hall Hotel*.
84. I have carefully considered the correspondence between Ms Sutherland or Ms Lomax and the court during this period. In doing so, I have been greatly assisted by a chronology and chronological bundle of documents provided by the claimant's counsel after the hearing, on 2 August 2024. In summary:
- (1) I accept that Ms Sutherland was making efforts to file the claim form throughout this period. On the other hand, those efforts were not informed by a consideration of the relevant provisions of the Practice Directions or the Information for Court Users.

- (2) I accept also that some of the court's emails were capable of causing confusion and delay, starting with the email sent on 3 October 2023. In particular, it was not until the email sent at 1.33 pm on 6 October 2023 that the court identified the real problem, namely that Ms Sutherland had attempted to file the claim form and accompanying documents by hyperlink.
 - (3) Having said that, Ms Sutherland had suspected as early as 4 October 2023 that this was the problem. Unfortunately, her attempted solution to the problem was to cause the court bundle to be split up into a series of separate documents, contrary to paragraphs A(1) and D(5) of the Information for Court Users.
 - (4) Although Ms Sutherland ought to have identified for herself that the claim form and accompanying documents should have been filed by means of the Document Upload Centre, she did at least ask in her email of 5.11 pm on 4 October 2023 whether there was another option for filing the claim form.
 - (5) It is unfortunate that the reply to that email did not mention the Document Upload Centre, but instead gave the impression that the only available alternatives were to send the claim form and accompanying documents by post or by hand. However, the court did send the Information for Court Users to Ms Sutherland at 11.01 am on 5 October 2023 and again at 1.33 and 3.02 pm on 6 October 2023.
 - (6) There is no evidence that Ms Sutherland read the copies of the Information for Court Users which were sent to her, but at 5.02 pm on 6 October 2023 she asked whether it was possible to use the Document Upload Centre and she used it as soon as she received the necessary link from the court.
85. Overall, therefore, the position is much more nuanced than simply saying that the claim form was filed 7 days late.

(4)(c)(iii) The Merits

86. I was not invited to form any view as to the merits of the proposed application for judicial review and I have not done so. In the words of Carr LJ in paragraph 17 of her judgment in *Good Law Project*, the most that can be said at this stage is that the claim may be arguable.

(4)(c)(iv) Prejudice

87. As for the prejudice which would be caused by extending the time for filing the claim form (and assuming that I were also to accede to the application for an order validating service of the claim form), the defendant would be deprived of an accrued limitation defence. The consequence of that would be either:
- (1) if the application for judicial review were unsuccessful, to delay the proposed development until permission to apply for judicial review was refused or until the application for judicial review was determined, or, in either case, until the conclusion of any appeal; or

- (2) if the application for judicial review were successful, presumably to require, at the conclusion of the proceedings, the reconsideration of the grant of planning permission, which might lead to the planning permission being refused or granted on the same or different conditions.
88. All of this would be prejudicial to Esteban, as the developer, and to the public interest which the council seeks to promote.
89. Refusing to extend the time for filing the claim form (or refusing to validate service of the claim form) would cause prejudice to the claimant in the sense that the claimant would not be given the opportunity to challenge the planning permission, although it is relevant to note that that is an opportunity which the claimant had, but did not exercise in time. If the application for judicial review would have been unsuccessful, the outcome for the claimant would be the same. If, however, the application for judicial review would have been successful, the council would presumably have been required, at the conclusion of the proceedings, to reconsider the grant of planning permission, which might have led to the planning permission being refused or granted on the same or different conditions. The refusal of planning permission would be regarded by the claimant as a benefit, as might the grant of planning permission on different conditions, depending on what those conditions were.
90. As for the claimant's contention that the permitted development would have a significant adverse effect on the claimant's operations, this was disputed and I was not taken to any report by the expert on whose opinion this contention was based. Moreover, it is accepted in the statement of facts and grounds that it may be the case that the claimant will be able, despite the permitted development, to continue to comply with condition 15 of its planning permission, albeit after implementing additional expensive mitigation measures. It may be, therefore, that the claimant would be put to some expense, although that expense was not quantified in the evidence before me.
91. As for the potential prejudice to good administration, extending the time for filing the claim form (assuming that I were also to accede to the application for an order validating service of the claim form) would extend the time within which the validity of the planning permission would remain in doubt. On the other hand, refusing to extend the time for filing the claim form would entitle the parties to treat as valid a planning permission which may arguably be unlawful.

(4)(c)(v) Conclusion

92. Balancing all of these factors in the light of the guidance given in *Thornton Hall Hotel*, I have concluded that I should not extend the time for filing the claim form. In my judgment the factors which point in favour of the claimant's application are outweighed by those which point the other way.

(5) The Application for an Order Validating Service of the Claim Form

(5)(a) The Claimant's Submissions

93. On behalf of the claimant it was submitted that:

- (1) Ms Sutherland acted promptly in attempting to serve the claim form on the day on which it was issued.
 - (2) The claim form and all accompanying documents were received by the council on 11 October 2023.
 - (3) The claim form and all accompanying documents except the statement of facts and grounds were received by Clarke Willmott on 11 October 2023. Clarke Willmott received the statement of facts and grounds (albeit not from the claimant) on 19 October 2023, only one day after the expiry of the time for serving the claim form.
 - (4) The only prejudice caused to the council and to Esteban was the loss of an accrued limitation defence.
94. Reliance was also placed on what Phillips LJ said in his dissenting judgment in *Good Law Project*.

(5)(b) The Council's and Esteban's Submissions

95. On behalf of the council and Esteban it was submitted that:
- (1) The court has no power under CPR 6.15(2) to validate service of the claim form and accompanying documents on Esteban, since the documents served on Esteban did not include the statement of facts and grounds, without which the claim form was incomplete: see paragraphs 4.1 and 4.2 of Practice Direction 54A.
 - (2) In any event, the court should exercise its discretion to refuse the order sought, not least because:
 - (a) The claimant did not take reasonable steps to serve the claim form.
 - (b) The claimant did not make Esteban aware of the contents of the claim form. There were also material differences between the statement of facts and grounds and the letter before action.
 - (c) The loss of an accrued limitation defence would constitute prejudice to the council and Esteban.
96. In response to what Phillips LJ said in his dissenting judgment in *Good Law Project*, the council and Esteban relied on what Underhill LJ said in that case.

(5)(c) Decision

97. Given my decision on the application for an extension of the time limited for filing the claim form, it is strictly unnecessary for me to make a decision on the application for an order validating service of the claim form. However, I will set out what my decision would have been, in case this matter is considered in another court.

(5)(c)(i) The Application of CPR 6.15(2)

98. CPR 6.15 is concerned with service by an alternative method or at an alternative place. It is not concerned with service of an incomplete claim form. An order under CPR 6.15(1) or (2) permits or validates service of a claim form. It does not permit or validate service of an incomplete claim form.
99. As I have said, it was not disputed before me that the statement of facts and grounds is an essential part of the claim form. This can be seen from the form itself and from paragraphs 4.1 and 4.2 of Practice Direction 54A. It follows that I accept the submission that service of a claim form without the accompanying statement of facts and grounds cannot be validated under CPR 6.15(2).
100. It does not follow, however, that CPR 6.15(2) cannot apply to the unusual facts of this case. As to that:
- (1) I note that the “steps already taken to bring the claim form to the attention of the defendant by an alternative method” were the same in the case of the council as in the case of Esteban. It was not disputed that CPR 6.15(2) can be applied in the case of the council. It would be odd if it could not be applied in the case of Esteban, in respect of whom the same steps were taken.
 - (2) Putting the matter another way, the steps taken by the claimant to bring the claim form to the attention of the council and Esteban were the sending on 11 October 2023 of an email containing a hyperlink to a document which initially did not include the statement of facts and grounds, but which at some time on 12 October 2023 (for reasons which are unclear) did come to include the statement of facts and grounds.
 - (3) That is not to overlook the fact that the statement of facts and grounds did not come to Esteban’s attention during the period for the service of the claim form. However, I consider that that is best seen as a factor, and a significant factor, relevant to the exercise of the court’s discretion, rather than as something which necessarily precludes the use of CPR 6.15(2) at all.

(5)(c)(ii) Discretion

101. I will consider the factors identified by Carr LJ in paragraph 55(iv) of her judgment in *Good Law Project*. I have not been assisted by the passages cited from Phillips LJ’s dissenting judgment, with which Underhill LJ expressly disagreed.
102. The first question is whether the claimant has taken reasonable steps to effect service in accordance with the rules. It is conceded that reasonable steps were not taken. In particular:
- (1) As with the filing of the claim form, there is no evidence that Ms Sutherland made, and I infer that she did not make, any effort to consult the relevant provisions of the CPR or of the Practice Directions in order to ascertain how the claim form should be served.

- (2) Ms Sutherland did not ask the council or Clarke Willmott the question which she was required to ask by paragraph 4.2 of Practice Direction 6A before effecting service by email.
 - (3) Clarke Willmott had stated that its address for service was its postal address. The claimant was not entitled under CPR 6.3(1)(d) and paragraph 4.1 of Practice Direction 6A to serve the claim form on Clarke Willmott by email.
 - (4) It was accepted that the claimant was entitled to serve the claim form on the council by email, but not by an email sent to Mr Pinney's email address.
 - (5) Ms Sutherland's email contained a hyperlink to the claim bundle which, until some time on 12 October 2023, did not contain the statement of facts and grounds. (It was not argued before me that Ms Sutherland could not properly use a hyperlink, rather than an attachment, when serving the claim form.)
 - (6) Ms Sutherland either did not read, or did not act on, the statement in Mr Baker's "out of office" email of 11 October 2023 that Clarke Willmott did not accept service of proceedings by email.
103. The next question is whether the defendant or its solicitor was aware of the contents of the claim form at the time when it expired. In short, the council was, but Esteban was not. Having said that, the council provided the statement of facts and grounds to Clarke Willmott only a day after the claim form expired and the claimant provided it to Clarke Willmott only 7 days after the claim form expired. The letter before action did not tell Esteban what the statement of facts and grounds contained, since the two were materially different.
104. The third question is what, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form. I have already considered the potential prejudice to Esteban and to the public interest which the council seeks to promote which would result if I were to allow the two applications.
105. Taking account of all of the relevant factors, and bearing in mind the contextual points identified by Carr LJ in paragraphs 38 to 41 of her judgment in *Good Law Project*, I have concluded that, even if I am wrong not to extend the time for filing the claim form, it would not be appropriate for me to validate service of the claim form. The factors pointing in favour of the claimant's application are outweighed by the factors pointing the other way.

(6) Summary

106. For the reasons given in this judgment, I dismiss the claimant's application, with the agreed consequence that I should make an order dismissing the claim.
107. I am grateful to all counsel and solicitors for their assistance in dealing with this unusual case.