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Case No: CO/4846/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/03/2015

Before :

MR JUSTICE LEWIS

- -

Between :

	NOTTINGHAM CITY COUNCIL	**Applicant**
	- and -	
	CALVERTON PARISH COUNCIL	**Respondent**

- -
- -

Annabel Graham Paul (instructed by **Nottingham City Council**) for the **Applicant**
Richard Turney (instructed by **Public Access**) for the **Respondent**

Hearing date: 19th February 2015

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Judgment Mr Justice Lewis:

INTRODUCTION

1. This is an application by Nottingham City Council ("the City Council") to strike out a claim made by Calverton Parish Council ("the Parish Council") pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") for an order quashing a development plan document which contains the Core Strategy adopted by the City Council for its area.

2. The application raises one short but important point of statutory construction. By virtue of section 113(4) of the 2004 Act, an application to quash a development plan document must be made no later than the end of the period of six weeks starting with the relevant date, here the date of adoption of the document plan document. In the present case, the development plan document was adopted on 8 September 2014. The application to quash was made on Monday, 20 October 2014. The court office was closed on Sunday, 19 October 2014 and an application could not be made on that day. Subject to the proper interpretation of section 113(4) of the 2004 Act, the six week period would have ended on a Sunday, the 19 October 2014.

3. The question is whether, when the last day for making an application falls on a date

when the relevant court office is closed so that an application cannot be made on that day, is section 113(4) of the 2004 Act to be interpreted so that the period of six weeks for making an application ends on the next working day when an application can be made? If so, the period for making the application in this case would end on Monday 20 October 2014 and the claim would not be barred by section 113(4) of the 2004 Act.

THE LEGAL FRAMEWORK

The Local Development Scheme and Development Plan Documents

4. In brief, the statutory framework governing the preparation and adoption of development plan documents is as follows. Section 15 of the 2004 Act requires a local planning authority to prepare and maintain a local development scheme for its area. Section 17(3) of the 2004 Act provides that:

> "(3) The local planning authority's local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area"

5. Furthermore, section 15(2)(aa) of the 2004 Act provides that the local development scheme must specify which local development documents are to be "development plan documents". There are provisions governing the preparation of development plan documents: see section 19 of the 2004 Act. There is a duty on local planning authorities to co-operate in the preparation of development plan document: section 33A of the 2004 Act. A local planning authority must submit every development plan document to the Secretary of State for independent examination: section 20 of the 2004 Act. There are provisions enabling the local planning authority to adopt the development plan document if the examiner recommends adoption, or to make main modifications and then adopt the development plan if the independent examiner so recommends: see section 23 of the 2004 Act.

The Development Plan

6. The development plan has particular significance in the operation of the planning system. So far as England outside Greater London is concerned, the development plan is now defined by section 38(3) of the 2004 Act as:

> "(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area and
> (c) the neighbourhood development plans which have been made in relation to that area"

7. Section 38(6) of the 2004 Act provides that:

> "(6) If regard is to be had to the development plan for the purposes of any determination made under the planning Acts the determination must be made in accordance with the development plan unless material considerations indicate otherwise".

8. That subsection applies to, amongst other things, decisions on applications for planning permission for development (see section 70 of the Town and Country Planning Act 1990). If proposed development conflicts with the development plan, planning permission will be refused unless material considerations indicate otherwise.

Challenges to the Validity of Development Plan Documents

9. There is provision for challenging the validity of development plan documents. Section 113 of the 2004 Act provides, so far as material that:

"113 Validity of strategies, plans and documents
"(1) This section applies to–

…..

(c) a development plan document;

and anything falling within paragraphs (a) to (g) is referred to in this Section as a relevant document.

"(2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.

"(3) A person aggrieved by a relevant document may make an application to the High Court on the ground that–

(a) the document is not within the appropriate power;
(b) a procedural requirement has not been complied with.

"(4) But the application must be made not later than the end of the period of six weeks starting with the relevant date.

"(5) The High Court may make an interim order suspending the operation of the relevant document–

(a) wholly or in part;
(b) generally or as it affects the property of the applicant.

"(6) Subsection (7) applies if the High Court is satisfied–

(a) that a relevant document is to any extent outside the appropriate power;
(b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement.

"(7) The High Court may—

(a) quash the relevant document;
(b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.
…..

"(8) An interim order has effect until the proceedings are finally determined.
…..

"(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.

"(11) References to the relevant date must be construed as follows–

…..

(c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be);

….."

THE FACTS

10. The City Council, in co-operation with two other local planning authorities, Broxtowe Borough Council and Gedling Council began working on appropriate polices for the development and use of land within their respective areas. The three local planning authorities prepared a document described as the "Greater Nottingham – Broxtowe Borough Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan" ("the Aligned Strategies document"). That document set out a policy, Policy 2, setting out a spatial strategy for sustainable development. As part of that policy, the Aligned Strategies document identified that there was considered to be a need for a minimum of 30,550 new homes over the period 2011 and 2028. It proposed that 17,150 new homes would be provided within the area of the City Council, 6,150 within the area of Broxtowe Borough Council and 7,250 within the area of Gelding Borough Council. Policy 3 in the Aligned Strategies document provided, amongst other things, for a review of Green Belt Boundaries in order to deliver the development anticipated in Policy 2.

11. On 7 June 2013, the Aligned Strategies document was submitted to the Secretary of State and an independent examiner was appointed to conduct an examination under section 20 of the 2004 Act. On 24 July 2014, the independent examiner recommended that, with main modifications, the "Greater Nottingham - Broxtowe Borough, Gedling Borough and Nottingham City Councils' Aligned Core Strategies Local Plan" satisfied the requirements of section 20(5) of the 2004 Act and was sound.

12. On 8 September 2014, the City Council resolved to adopt the Aligned Strategies document as a development plan document for its area. On 9 September 2014, the City Council published an adoption statement pursuant to regulation 26 of the Town and Country Planning (Local Development) (England) Regulations 2012 ("the 2012 Regulations), stating that the City Council had adopted its Core Strategy on 8 September 2014. The Core Strategy was said in the adoption statement to provide "the vision, objectives, spatial strategy, polices and strategic policies for the City up to 2028". In essence, the Aligned Strategies document, or at least those parts of it relevant to the City Council's area, became a development plan document for its area (see section 17(7) of the 2004 Act and regulations 5(1), 6 and 26 of the 2012 Regulations). As such, the Core Strategy is one of the City Council's development plan documents and is part of its local development scheme.

13. On 10 September 2014, Gedling Borough Council, it seems, similarly resolved to adopt the Aligned Strategies document, or at least those parts of it relevant to its area, as a development plan document. On 17 September 2014, Broxtowe Borough Council did likewise.

14. On 20 October 2014, the Claimant, the Parish Council, issued a single claim, naming as the three defendants, the City Council, Broxtowe Borough Council and Gedling Borough Council. The claim form stated that it was an application under section 113 of the 2004 Act seeking an order to quash the "Greater Nottingham – Broxtow Borough, Gedling Borough and Nottingham City – Aligned Core Strategies" in so far as it related to the quantum and distribution of new housing in the three local authorities' areas and provided for a review of Green Belt boundaries.

THE ISSUE

15. On 12 November 2014, the City Council applied to strike out the claim so far as it related to the City Council on the grounds that the application against it was made outside the time permitted by section 113(4) of the 2004 Act. In brief, the City Council contended that the section 113(4) of the 2004 Act provided that an application to quash a development plan document consisting of a Core Strategy had to be made no later than the end of a period of 6 weeks starting with the date of adoption of the development plan document. That document was adopted on 8 September 2014. The six week period ended at midnight on Sunday 19 October 2014. The claim was not brought until Monday 20 October 2014, that is, after the end of the period of 6 weeks starting with the date of adoption, and so was out of time.

16. The Parish Council contended that where a period for making an application ended on a day where the relevant court office was closed, so that no application could be made on that day, a statutory provision such as section 113(4) of the 2004 Act was to be

interpreted as permitting an application to be made on the next working day upon which an application could be made. Here, an application could not be made on 19 October 2014 so that section 113(4) was to be construed as permitting an application to be made on the next available date, 20 October 2014.

DISCUSSION

17. In considering the proper interpretation of section 113(4) of the 2004 Act, certain matters are well-established by the existing case law on section 113(4) or by analogy with similar provisions such as section 288 of the Town and Country Planning Act 1990 ("the 1990 Act").

18. First, the starting point for the period for making an application under section 113 of the 2004 Act for an order to quash a development plan document is the date when the local planning authority resolved to adopt the development plan document: see *Barker v Hambleton District Council* [2013] PTSR 41 at paragraphs 13 to 14, and *Hinde v Rugby Borough Council* [2012] JPL 816.
19. Secondly, a court has no power to extend the period within which an application can be made. The time-limit is a statutory limitation upon the jurisdiction of the court. The statutory provisions, themselves, confer no power to extend the time within which the application must be made. Rule 3.1 of the Civil Procedure Rules only provides a power to extend the time for compliance with "any rule, practice direction or court order" and does not provide a power to extend the time fixed for compliance by the statute itself. See *Barker v Hambleton District Council* [2013] PTSR 41 at paragraph 19.

20. Thirdly, the six-week period includes non-working days, that is Saturdays, Sundays and Bank Holidays when the appropriate court office is closed and an application may not be made: see *Stainer v Secretary of State for the Environment* (1983) 65 P & C.R. 310 (dealing with section 288 of the 1990 Act).

21. Fourthly, and subject to the question that arises in this case, the six-week period is a period of 42 days starting on the day of adoption and ending at midnight on the 42 second day: see *Hinde v Rugby Borough Council* [2012] JPL 816.

22. Those propositions, however, do not deal with the issue that arises in the present case, that is, what is the position, on a proper interpretation of section 113(4) of the 2004 Act, when the last day of the 6 week period falls on a non-working day? The decision in *Barker* did not involve that issue. The development plan document in that case was adopted on 21 December 2010. On Tuesday 1 February 2011, at 19.46, a trainee solicitor posted a claim form and particulars of claim under the glass front entrance of the combined Court centre. As the 6 week period began on 21 December 2010, it ended at midnight on Monday, 31 January 2011. Attempts to issue it on Tuesday 1st February 2011 were ineffective as the time limit had already expired on the Monday before. That day, however, was a working day and an application could have been made on that day and within the six week period beginning with the date of adoption. The question of what the position would have been had the final day for making the application fallen on a weekend or a Bank Holiday did not therefore arise.

23. Viewed in isolation, there is considerable force in the argument made by Ms Paul on behalf of the City Council that, read literally, the claim in the present case was issued out

of time. An application under section 113 of the 2004 Act "must" be made "no later than the end of the period of six weeks starting with" the date of adoption. If the last day of the six week period fell upon a Sunday, and the claim was issued on the Monday (as here), then there is considerable force in the argument that the applicant would have been made 6 weeks and 1 day after the date of adoption, that is, it would have been made after the end of the period of six weeks. If a claimant wished to make an application within the prescribed time, and if the last day fell upon a Sunday, then there is force in the argument that the claimant should make the application on the previous Friday. That would ensure that the application was made within time.

24. Further, the context in which such claims are made supports such an interpretation. The need for short time-limits for bringing claims, and strict adherence to those time-limits, is recognised as particularly important in public law where challenges may affect not only the parties to the claim but also other third parties who may need to know whether or not a particular measure is valid. In the present context, challenges to the validity of measures brought under section 113 of the 2004 Act may affect not only the individual claimant and the defendant local planning authority. They may affect other property owners, other residents, and other applicants for planning permission. A development plan document forms part of the development plan and, by virtue of section 38(6) of the 2004 Act, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. A challenge to a development plan document is, therefore, likely to have a wider significance extending beyond the interests of the claimant and the local planning authority. An approach to section 113(4) of the 2004 Act which adopted a strict, literalist approach may well be thought to be consistent with the concern to ensure certainty in relation to the validity of such measures.

25. There is, however, a body of case law, on which Mr Turney for the Parish Council relies, which indicates that a different interpretation is to be given to provisions of statutory limitation periods such as that contained in section 113(4) of the 2004 Act. In *Hodgson v Armstrong* [1967] Q.B. 299, the Court of Appeal dealt with section 23 of the Landlord and Tenant Act 1954 which provided that no application for a new tenancy should be entertained unless it was made "not less than two months nor more than four months after the giving of the landlord's notice". The four month period expired on 19 April 1965, an Easter Monday, when the court office was closed. The majority in the Court of Appeal, Seller L.J. and Davies L.JJ, with Russell L.J. dissenting, held that an application made on the next day, Tuesday 20 April 1965 was validly made. Sellers L.J. held that the question involved the proper interpretation of the relevant section in order to define the days that counted towards the four month period. Parliament had legislated on the basis that the court would be functioning and able to receive the application and, as the courts were not functioning on 19 April 1965, that date did not fall to be treated as part of the four month period. Davies L.J. held that the relevant statutory provision contemplated the initiation of proceedings in accordance with rules of court and the relevant rule at the material time, Ord. 40 rule 8 of the County Court Rules 1936, expressly provided that where the time for doing any act expired on a Sunday or any other day on which the court office was closed, the act was to be treated as being done in time if it is done on the next day on which the court office is open.

26. The approach to the interpretation of statutory limitation periods was considered by the Court of Appeal in *Pritam Kaur v S. Russell & Sons Ltd.* [1973] 1 Q.B. 336. That case concerned a statutory time limit relating to a claim under the Fatal Accidents Act 1846.

The Limitation Act 1939 provided that an action "shall not be brought after the expiration of three years from the date on which the cause of action accrued". The provisions of the Fatal Accidents Act 146 provided that proceedings "shall be commenced within three years after the death". Nothing turned on that difference in wording. The three year period in the present case expired at midnight on 5 September 1970. That was a Saturday and the 6 September 1970 was a Sunday. The claimant issued her writ on Monday 7 September 1970. Lord Denning M.R., with whom Karminski L.J. agreed, noted first that the time-limit was prescribed by statute and, in disagreement with the judgment of Davies L.J. in *Hodgson v Armstrong* [1967] 2 Q.B. 299, considered that the rules of court could not be used to prescribe or define a time-limit fixed by the statute itself. He then considered the arguments as to whether the statutory provision itself could be interpreted so that, when the time limit would otherwise end on a day which was not a working day, a claim could be brought on the next working date. He summarised first the arguments of the two parties in the following terms:

> "The arguments on each side are evenly balanced. The defendants can say: "The plaintiff has three years in which to bring his action. If the last day is a Saturday or Sunday, or other dies non, he ought not to leave it till the last day. He ought to make sure and issue it the day before when the offices are open." The defendants can rely for their view on the reasoning of Russell L.J. in *Hodgson v Armstrong* [1967] 2 Q.B. 299, 323 et seq., and the cases to which he refers.
>
> "The plaintiff can say: "The statute gives me three years in which I can bring my action. If I go in to the offices on the last day, and find them closed, I ought not to be defeated on that account. I should be allowed to go next day when the offices are open. Otherwise, I should be deprived of the three years which the statute allows me." The plaintiff can rely for this view on the reasoning of Sellers L.J. in *Hodgson v. Armstrong*, at pp. 309 et seq. and the cases to which he refers."

27. Lord Denning M.R. then held that the claim was brought in time, holding that:

> "Those arguments are so evenly balanced that we can come down either way. The important thing is to lay down a rule for the future so that people can know how they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the Rules of Court for doing any act. The rule prescribed in both the county court and the High Court is this: If the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself: and we avoid confusion to practitioners. So I am prepared to hold that when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open."

28. Megarry J. gave a concurring judgment in which he concluded that the proper approach to statutory interpretation in such cases was as follows:

> "Accordingly, in my judgment the result is as follows. There are a number of cases which support the general rule that a statutory period of time, whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of the period. That rule remains, but there is a limited but important exception or qualification to it, which may be derived from a line of authorities which include Hughes v. Griffiths, Mumford v. Hitchcocks, the judgment of Sellers L.J. in Hodgson v. Armstrong, and the Scottish cases. If the act to be done by the person concerned is one for which some action by the court is requisite, such as issuing a writ, and it is impossible to do that act on the last day of the period because the offices of the court are closed for the whole of that day, the period will prima facie be construed as ending not on that day but at the expiration of the next day upon which the offices of the court are open and it becomes possible to do the act. In this appeal, there is nothing in the facts of the case which ousts the prima facie application of this exception, which accordingly applies. I therefore concur in allowing the appeal."

29. A similar conclusion has been reached dealing with other statutory provisions prescribing a time for making a claim in other contexts, by other courts. In *Aadan v The Mayor & Burgess of the London Borough of Brent* [2000] 32 H.L.R. 848, the Court of Appeal considered the interpretation of section 204 of the Housing Act 1996, which

conferred a right of appeal to the county court on an applicant who was dissatisfied with a review of a decision under the Housing Act 1996. The statutory provision provided that an appeal "must be brought within 21 days of his being notified of the decision". The 21 day period ended on 25 July 1998, which was a Saturday when the court was not open. The Court of Appeal held that the period expired on 27 July 1998. Chadwick L.J. expressed that conclusion in the following terms:

> "The problem, as a matter of statutory construction, is to determine whether, when Parliament provides that some act must be done within a limited period (say 21 days) in the knowledge that there will be circumstances in which it is not possible to do that act on the last day of that period (in this case, the 21st day), Parliament is to be taken to have intended, by the use of the word "within", that the act must be done before such time as it becomes impossible to do it; or whether, it being impossible to do it on what would otherwise be the last day, Parliament intended that the act might be done on the first day after that day on which it is again possible to do it. As Lord Denning MR accepted in the passage to which I have referred either view is tenable; which to adopt was essentially a matter of policy. The question is: what is Parliament to be taken to have intended by the words which it used? That question was answered by this Court in Pritam Kaur. Parliament must be taken to have intended that the act can be done on the first working day after day on which the period would otherwise have expired. The powerful reasons to the contrary, set out in the judgment of Russell LJ in Hodgson v Armstrong [1967] 2 QB 299, at page 323, did not prevail. It is not now open to us to consider whether we would have preferred the reasoning of Russell LJ to the reasoning of Sellers LJ in that case."

30. Staughton L.J. gave a concurring judgment. A similar approach to statutory interpretation was taken by Arden J. (as she then was) in *Re Philipp and Lion Ltd.* [1994] B.C.C. 261. That case dealt with the period for bringing proceedings seeking an order disqualifying a person from acting as a company director. The statutory provision provided that such an application "shall not be made after the end of 2 years beginning with the day on which the company of that that person is or has been a director became insolvent." The date upon which the company became insolvent was 3 May 1991. The last day of the period "beginning with that date" was 2 May 1993. The court offices were closed on 1,2 and 3 May 1991, those days being a weekend and a Bank Holiday. Arden J. considered first what was the ratio of the decision in *Pritam Kaur v S. Russell & Sons Ltd.* [1973] Q.B. 336 and held that:

> "The ground of the decision was thus that there was a general rule that if the last day prescribed for doing an act, for which it was necessary that the court office should be open, fell on a day when the court office was closed, time was extended to the next day when the court office was open"

Accordingly, Arden J. held that the application had been made within the period, prescribed by the statute for making such applications.

31. Finally, the matter was considered by the House of Lords in the context of extradition in *Mucelli v Government of Albania* [2009] 1 W.L.R. 276. Section 26 of the Extradition Act 2003 provided that where an appropriate judge ordered a person's extradition, that person could appeal to the High Court and notice of the appeal had "to be given in accordance with rules of court before the end of the permitted period, which is seven days starting with the day on which the order is made". Section 103 of the statute provided for an appeal against a decision of the district judge to refer his case to the Secretary of State and provided, in similar terms to section 26, that notice of appeal had to be given within a prescribed period which, in relation to that section, was 14 days.
32. Lord Neuberger, with whom Lord Phillips, Lord Carswell and Lord Brown agreed,

considered the question of what the position would be if the office of the recipient of the notice was closed on or during the last day of service. At paragraphs 83 to 85 , Lord Neuberger said this:

> "83 Another point which arises is what happens if it is impossible to give notice on, or during the final part of, the last day. For instance, in relation to filing, the court office may be closed on the last day because it is Christmas Day or another Bank Holiday, and the court office will be closed at some point in the late afternoon on the last day. Equally, the respondent's office may be closed for the same reasons.
>
> "84 Where the requisite recipient's office is closed during the whole of the last day, I consider that the notice will be validly filed or served if it is given at any time during the first succeeding day on which the office is open (i e the next business day). So if the final day for giving a notice of appeal would otherwise be Christmas Day, filing or service can validly be effected on 27 December (unless it is a weekend, in which case it would be the following Monday). This conclusion accords with that reached in *Pritam Kaur v S.Russell & Sons Ltd.* [1973] Q.B. 336. As Lord Denning MR said, at p 349,
>
> > "when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when time expires, then, if it turns out … that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open."
>
> I agree, and I can see no reason not to apply the same principle to service on a respondent in relation to the respondent's office. The fact that fax transmission can be effected at any time does not cause me to reconsider that conclusion.
>
> "85 It might be argued that it follows from this that time should be similarly extended to the next business day, in cases where, even if only for a few hours, the required recipient's office is closed before midnight on the final day (as will always be true of the court, and will almost always be true of any other recipient). In my opinion, while there is a real argument based on consistency to support such a proposition, it is not correct, at least where the office in question is open during normal hours. While there is no reason to deprive an appellant of his full statutory seven or 14 days, if, for instance he transmits his notice of appeal by fax, or even if he posts the notice through a letter box in the door of the respondent's office, just before midnight on the last day for service, it does not follow that he should have cause for complaint if he cannot file the notice at the court office, or serve it on the respondent in person, outside normal office hours. I believe that this conclusion is consistent with the law as it is understood in relation to time limits for filing and service, when it comes to the operation of the Limitation Act 1980."

33. In my judgment, the approach set out in *Kaur* and approved and followed in other cases, sets out a general approach to the interpretation of statutory provisions prescribing periods within which proceedings must be brought. I recognise that the precise provisions of a particular statute may be such that a different approach is called for in relation to that particular statute. In general terms however, where a statutory provision provides that proceedings must be brought no later than the end of a specified period, and the bringing of proceedings requires that the court office be functioning, and the last day of the prescribed period falls on a day when the court office is closed, then the statutory provision is to be interpreted as permitting the proceedings to be brought on the next day when the court office is open.

34. In the present case, for the reasons set out below, the making of an application for an order to quash a development document cannot be made unilaterally by the claimant and requires the co-operation of the court office. If the last day of the six week period prescribed by section 113(4) of the 2004 Act falls on a day when the court office is closed, then the claim may validly be brought on the next day when the court office is open.

35. There is nothing in the specific wording of section 113(4) of the 2004 Act which justifies

reaching a different conclusion from that reached in *Kaur*. In terms of the end of the relevant statutory period, there is no material difference between a provision that proceedings "shall not be brought after the expiration of three years" or "commenced within three years" (the two statutory provisions in issue in *Kaur*) and the words of section 113(4) of the 2004 Act which require that the proceedings "must be made not later than the end of the period of six weeks". The provisions governing the starting point of the period differ as between the two cases but the provisions governing the end of the period are not materially different.

36. Further, the context in which section 113(4) of the 2004 Act operates is not sufficiently different to justify a different approach to interpreting section 113(4) of the 2004 Act. It is correct that the other cases tend to involve situations where the interpretation of the statutory provision is likely only to affect the parties to the particular claim. In *Hodgson v Armstrong*, and *Kaur*, for example, the interpretation of the provision affected the two parties to civil proceedings. In *Mucelli* and in *Philipp and Lion Ltd.* there was a wider public interest involved as the case involved extradition proceedings and proceedings for the disqualification of a company director. Again, however, it is correct to say that the decision would principally affect the parties to the particular proceedings. In cases involving section 113(4), the effect of permitting challenges to measures such as development plan documents may well affect persons other than the parties to the proceedings. If the proceedings are permitted to continue, and if a development plan document is quashed, that document ceases to be part of the development plan. That affects others who have applied for, or are about to apply for planning permission, and others affected by such applications as the applications will to be decided in accordance with the development plan unless material considerations indicate otherwise.

37. Ultimately, however, those considerations are insufficient to justify a departure from the general approach to statutory interpretation recognised in *Kaur*. The effect of the application of the *Kaur* principle to section 113(4) of the 2004 Act will mean that persons will know that if the six week period ends on a weekend, or a Bank Holiday when the court office is closed, the claim may be brought on the next working day. There will still be certainty about the application of the limitation period in section 113(4) of the 2004 Act. Further, the prescribed time-limit for bringing proceedings will not be unduly lengthened beyond what Parliament must have intended when enacting section 113(4) of the 2004 Act. The *Kaur* principle will only have the effect, in practical terms, of lengthening the period by one or two days (if the six week period ends on a weekend) or possibly three or four days (if it ends on the first day of a period where there are two Bank Holidays and a weekend). The time-limit will still be short. It will still have to be adhered to strictly as there is no provision for any discretionary extension of time.

The Making of An Application to Quash

38. The application of the *Kaur* principle depends upon the fact that the application cannot be made unilaterally and that the court office is closed on the day when the period for bringing the claim expires. If the action can be taken unilaterally, without any need for action on the part of the court office, then the principle is not applicable. That was the position in *Swainston v Hetton Victory Cluib Ltd.* [1983] 1 All E.R. 1179. That case concerned the time limit for instituting proceedings in an employment tribunal. The relevant provision simply required that the complaint "be presented to the tribunal before the end of the period of three months" beginning with the effective date of termination of the contract of employment. The Employment Appeal Tribunal held that the act of

presenting a complaint to the tribunal was a unilateral act, which could be effected by leaving the complaint at the premises of the tribunal so that the principle in *Kaur* did not apply: see page 1181c-g and 1184c-f.

39. In my judgment, applications made under section 113 of the 2004 Act cannot be made unilaterally and do require the co-operation of the court office. First, section 113(3) provides that a person aggrieved "may make an application to the High Court". Secondly, that necessitates a procedure for making an application. That is contained in the Civil Procedure Rules. Indeed, section 1 of the Civil Procedure Act 1997 provides that there "are to be rules of court" governing the practice and procedure to be followed in, amongst other courts, the High Court.

40. Thirdly, claims are instituted in England and Wales by the bringing of claims under Part 7 or 8 of the Civil Procedure Rules (and the rules governing the bringing of claims under Part 8 are the same as those applicable to claims under Part 7: see paragraph 4.1 of Practice Direction 8A – Alternative Procedure for Claims). Applications to quash measures made by public bodies are generally instituted by the bringing of a claim under Part 8 of the Civil Procedure Rules (and in the case of challenges to measures made by a Minister or a government department must be so brought: see paragraph 9.1. of Practice Direction 8A). Applications relating to the validity of measures adopted by a local planning authority, such as a development plan document, are not required to be brought by a Part 8 claim but invariably will be as they will involve primarily questions of law and are unlikely to involve a substantial dispute of fact and so are suitable for resolution using the Part 8 procedure: see CPR 8.2.

41. Part 8 claims are started when they are issued (see paragraph 5.1 of Practice Direction 7A). Issuing requires the claim form to be sealed by the court, which, in this context, means an officer of the court: see CPR 2.6 and 2.5. Furthermore, where a claim is received in the court office on a date earlier than the date on which it is issued, the claim is brought for the purposes of the Limitation Act 1980 and "any other relevant statutes" on the earlier date. The date on which the claim is received is the date stamped on the claim form or the accompanying letter: see paragraph 5.1 and 5.2 of Practice Direction 7A. In my judgment, it is clear that the making of an application under section 113 of the 2004 Act does require the co-operation of the court. The court must issue the claim. Further, section 113 of the 2004 is a relevant statute for the purposes of paragraph 5.2 of Practice Direction 7A and the application may have been received in the court office at an earlier date than the date on which the claim was issued. The issuing, or the receipt, of the claim, in my judgment, each require actions on the part of a court officer. The days of business in the High Court are regulated by paragraph 2 of Practice Direction 2A – Court Offices. That paragraph provides that the offices of the Senior Courts (which include the High Court) will not be open on Saturdays, Sundays, Good Friday, Christmas Day and other prescribed days and Bank Holidays.

42. In the circumstances, therefore, an application for an order to quash a development plan document under section 113 of the 2004 Act must be made to the High Court. That requires the court office to be open and functioning. If the last day of the six week period falls on a day when the court office is not open, then, on a proper interpretation of section 113(4) of the 2004 Act, the claim may be presented on the next day when the court office is open. In the present case, the last day of the six week period would fall on a Sunday, 19 October 2014 when the court office was closed. The six week period is, therefore, to be treated as expiring on the next day when the court office was open, that

is Monday, 20 October 2014. The claim was therefore brought within the period specified by section 113(4) of the 2004 Act.

ANCILLARY MATTERS

43. The Parish Council made an alternative submission, namely that it would be entitled to relief even if its claim only continued against Broxtowe Borough Council and Gedling Borough Council and it was out of time for bringing a claim against the City Council. In brief, the basis of this submission was that the Aligned Strategies document was a single development plan document, albeit one adopted by three local planning authorities, and if the development plan document were quashed in a claim against any of those authorities, that would bind the other authorities.

44. Prima facie, that submission does not appear to be well-founded. As a matter of law, it would seem that each of the local planning authorities has adopted the Aligned Strategies document (or parts of it) as a development plan document for its area. A local planning authority must prepare a local development scheme, specifying which local development documents are to be development plan documents (see section 15(1) and (2)(a) of the 2004 Act). The local development documents must set out the authority's polices relating to the development and use of land "in their area". There is provision for two or more authorities to prepare a joint local development document: see section 28 of the 2004 Act. The local development scheme itself must specify which development documents if any are to prepared jointly with one or more other local planning authorities: see section 15(2)(d) of the 2004 Act. The parties here agree that the Aligned Strategies document is not a joint local development document within the meaning of section 28 of the 2004 Act. In those circumstances, there are strong arguments that each of the three local planning authorities has individually adopted a development plan document for its area, that document being referred to, or identified as, the Aligned Strategies document. The issues raised on this alternative submission do not, however, need to be resolved on this application, and were not the subject of full legal argument. I, therefore, express no concluded view on the matter.

45. Two other matters need to be noted. First, this case turns solely on the question of the proper interpretation of section 113(4) of the 2004 Act in circumstances where the final day of the six week period would fall upon a day when the court office is closed. In those circumstances, the period expires on the next working day. The judgment is not intended to deal with the situation where the court office was open during normal working hours but was closed for the few hours before midnight on the day when the six week period expires. As Lord Neuberger observed at paragraph 86 of his judgment in *Mucelli v Government of Albania* [2009] 1 W.L.R. 276, the fact that there were a few hours in a day when the court office would be closed would not justify interpreting a statutory provision governing the period for bringing the claim as expiring on the next working day. Finally, both parties agree that the approach to the proper interpretation of section 113(4) of the 2004 Act, so far as concerns the determination of the date when the six week period ends, is not affected either by European Union law or rights derived from the European Convention on Human Rights and incorporated into domestic law by the Human Rights Act 1998. Both parties agree that whichever interpretation of section 113(4) of the 2004 Act is correct as a matter of domestic law, that interpretation will not involve any violation of the European Union law principle of effectiveness or any breach of a Convention right.

CONCLUSION

46. On a proper interpretation of section 113(4) of the 2004 Act, where the six week period for bringing a claim would end on a day when the court office is closed, so that an application to quash a development plan document cannot be made on that day, the six week period ends on the next working day. In the present case, the six week period began to run on the day when the development plan was adopted, that is the 8 September 2014. The last day of a six week period would end on Sunday, 19 October 2014, a day when the court office was closed. On a proper interpretation of section 113(4) of the 2004 Act, Parliament intended the six week time limit to expire on the next working day, that is on Monday, 20 October 2014. As the claim was issued on that day, the claim against the City Council, seeking an order to quash the development plan document, was brought within the time prescribed by section 113(4) of the 2004. The application to strike out the claim is, therefore, dismissed.