Judgment Approved by the court for handing down
(subject to editorial corrections)

Neutral Citation Number: [2026] EWHC 2912 (Admin)

Case No: AC-2026-LON-000239

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Before :

MR C M G OCKELTON SITTING AS A JUDGE OF THE HIGH COURT

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Between :

The King on the application of TNC GROUP HOLDINGS LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
WEALDEN DISTRICT COUNCIL	**Interested Party**

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Ruchi Parekh (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Jack Smyth (instructed by **Government Legal Department**) for the **Defendant**
Harley Ronan (instructed by **Wealden District Council**) for the **Interested Party**

Hearing date: 16 July 2026

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JUDGMENT

C M G Ockelton :

Introduction

1. On 5 September 2023 the interested party, Wealden District Council, as local planning authority, granted outline planning permission to the claimant, TNC Group Holdings

Limited, for the demolition of an existing care home and building of a new one in Old Lane, Crowborough. There was (as there had to be) a condition that an application for approval of reserved matters be subsequently made to the Council. It required the application to be made to the Council no later than 18 months after the grant of permission. That period expired on 4 March 2025.

2. On that very day, 4 March 2025, the claimant used the Planning Portal to make its reserved matters application. It was not received or seen by the Council until the afternoon of 5 March. Although the Council did not at first realise that it might be out of time, and so began to process it as valid, by the beginning of July the Council was taking the view that the application had not been made in time and so the permission had lapsed. The Council affirmed its position in subsequent correspondence and declined to take any further action on the application.

3. The claimant thereupon lodged an appeal with the Planning Inspectorate under s 78 of the Town and Country Planning Act 1990 on the basis that the Council had failed to take a decision on its application within the time prescribed in Part 6 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("the DMPO"). After some procedural skirmishes, a case officer of the Planning Inspectorate issued a decision on 15 December 2025. The decision was that the application was invalid as it was out of time, and that the right of appeal under s 78 lay only in respect of a local planning authority's treatment of a valid (or validated) application.

4. These proceedings, filed on 19 January 2026, sought to challenge that decision on three grounds. The first ground is that the decision-maker erred in law by treating the Council's assessment of the application's validity as determinative and simply applying that characterisation to the question of whether an appeal lay. The second ground is that the case officer acted ultra vires: a decision on the validity of the application could be made only by the Secretary of State through an inspector, not by a case officer. The third ground is that in any event the application for reserved matters approval was not out of time.

5. Permission was granted on grounds 2 and 3 by Lieven J by Order of 13 March 2026. She refused permission on ground 1 because in her view it was clear, reading the decision as a whole, that the decision-maker had made an independent decision on whether the application was valid. I do not need to deal with that ground; and it is convenient to consider ground 3 before ground 2.

<u>The application: ground 3</u>

6. As I have said, the claimant used the online Planning Portal ("the PP") to make its application. The application was one that required a fee to be paid to the Council. The application itself was uploaded to the PP at 4.36 pm on 4 March. At 5.05 pm the PP accepted the claimant's payment nomination (ie the means of taking payment online). At 5.09 pm the payment left the claimant's bank account.

7. The PP did not, however, process the fee until 9.06 am on 5 March. Having done so, at 3.16 pm it submitted the application to the Council. It appears from the evidence that in fact it was not until nearly twenty minutes later, at 3.35, that it was made available to the Council, which downloaded it automatically into its system at 3.46 pm.

8. In the Statement of Facts and Grounds, and indeed in her skeleton argument, Ms Parekh set out a number of steps taken by the Council that would be consistent only with a view that the application was valid, as also the perhaps rather slow process of the Council's realisation that it was perhaps out of time, and its decision to that effect. I do not know whether mentioning those matters was intended to give a flavour of estoppel or legitimate expectation to the claimant's case, but they are incapable of doing so, and are wholly irrelevant. By s 93(4)(b) of the 1990 Act,

> "an application for the approval of a reserved matter, if it is made after the date by which the conditions require it to be made, shall be treated as not made in accordance with the terms of the permission".

9. There is no scope for the retrospective extension of time by the Council, and if the application is not made within the terms of the permission it follows that the development conditionally permitted cannot take place because the condition cannot now be fulfilled. The permission therefore lapses. Therefore the question in these proceedings is whether the application was made on 4 March or not. The conduct of the Council after that date, save as related to the actual receipt of the application, can make no difference. The dispute between the parties is essentially whether the application was made some time on 4 March when the claimant had completed the process of submitting it to the PP (or some sufficient part of that process), or some time on 5 March when, following processing within the PP, it became available for the Council to deal with.

10. The starting-point must be the requirements to be fulfilled by an applicant. The basic substantive requirements for an application of this sort are in articles 6 and 11(1) of the DMPO and there is no dispute that they were fulfilled in this case. By article 3 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, a fee is payable to the local planning authority. Articles 11(2) and 34 of the DMPO have the effect that time for the authority to acknowledge and decide the application does not begin to run until the authority receives the application, any other required documents, and the fee; but neither that provision nor any other to which I was referred suggests that an application is not valid without the fee, or is not valid until the fee has been received. I accept the claimant's submissions on that point.

11. The PP is, as Holgate J (as he then was) said in R (Rahimian) v Secretary of State for Communities and Local Government [2016] EWHC 1634 (Admin) at [6], 'the Inspectorate's online facility'. That was in a case where the question was whether a notice of appeal had been submitted to the Inspectorate on time. Holgate J did not say that the PP was anybody else's online facility. The PP is available to members of the public, the Inspectorate, and local planning authorities who have decided to use it or allow its use. The Council in the present case encourages its use for the purpose electronic submission of planning applications.

12. 'The answer to the question: when is an application "made"? is wholly dependent on context and in particular wholly dependent on the construction of the relevant regulatory or statutory provision in respect of which the question arises': R (Morris Homes) v Bolton Council [2025] EWHC 657 (Admin) at [23]. Here, however, the claimant accepts, as a matter of general principle and on the authority of the decision of the Court of Appeal in Camden LBC v ADC Estates Ltd (1991) 61 P&CR 48, that

an application is 'made' when received by its intended recipient. Until that time it has not been made. After that time it has been made, even if the recipient is slow to appreciate that it has received the application.

13. On the strength of the availability of the PP to the public, and the Council's encouragement of its use, the claimant argues that the PP is to be seen as the Council's agent, such that submission of an application to the PP is, without more, submission to the Council. This possibility was also raised by Lieven J in granting permission. On that basis, the claimant says that the application should be regarded as made at 4.36 pm on 4 March, and the payment being later, and the Council not actually seeing the application until later, would not matter.

14. In my judgment, the argument that the Council has constituted the PP as its agent for receipt (as distinct from transmission) of applications, so that receipt by the PP is in principle to be regarded as receipt by the Council, is hopeless. Even on the claimant's best case, nothing is cited that could lead to that conclusion. The PP's website itself, in the passages relied upon by the claimant, does not say that submission to the PP is submission to the Council: they say that the form uploaded to the PP 'is sent online directly to the local planning authority', and that once an application has been made online using the PP, 'it will automatically be received by the relevant local planning authority'. Anybody who reads that will appreciate that the PP is a mode of transmission. Nobody would think that for these purposes the PP was itself acting as the local planning authority for the purposes of receipt. If it were, further sending, as set out in the first extract, and the future tense as used in the second would not be appropriate.

15. I am not remotely persuaded by the claimant's argument that the specialised nature of the PP's operation makes it more likely to be the Council's agent, nor by the fact that after the application has been committed to the PP it is outside the control of the sender. On behalf of the claimant, Ms Parekh argued that for these reasons it is akin to the electronic version of a dropbox that the Council might install in its premises and in which hard copy applications could be left. On the contrary: it is nothing at all like such an arrangement. It is not on the Council's premises, is not under the Council's control, and does not by its nature suggest that it is set up in order to be the place where the Council receives applications. Further, it is not the Council's own box, and it is available for communication with many councils and some other bodies. If it is like a box at all, it is much more like a postbox.

16. The way the PP functions is clear from the advice it itself gives, to which I now turn.

17. The PP makes arrangements for the collection and transmission of payments through a third-party payment service. The mechanism of payment itself is outside the control of the PP, and the PP makes it clear that there may be a delay of a greater or lesser period before a payment is cleared. What is clear beyond any shadow of doubt is that (whatever the case as a matter of the general law, as noted in paragraph [10] above), an application made through the PP must be accompanied by the fee. Although the PP's general statement is that 'once you have submitted your application it will automatically be received by the relevant Local Planning Authority', that is in the context of immediately preceding instructions that 'Your application must be made up of [various documents and] the correct fee'. Further down in the same general advice, the PP's front page, is a heading 'mandatory documents'. The text begins 'As a minimum you

must provide the following documents in order for your planning application to be valid:' and there is again a list, ending with 'Correct application fee' and a link enabling a user to calculate what the correct amount is. It is possible to doubt whether a fee is a document, but it is not possible to doubt that an application that the user chooses to make through the PP needs to be accompanied by the fee in order for the PP to process it and send it 'automatically' to the Local Planning Authority.

18. The PP's terms and conditions are also set out on the website. 'Users of the Planning Portal website are bound by the Terms and Conditions set out below …. . If you do not agree to these terms, you must not use our site.' The 'Payment Service Terms and Conditions' are part of the Terms. They 'create a binding contract between you and us when you use [or] purchase our services'. One of the terms is this:

> "3.1 Once we have received and processed a Payment made by you via our payment service, we will send your application to the relevant LPA or BCB. This is subject to you providing us with [the means of deriving the payment from your bank]."

Later subparagraphs of condition 3 deal with the clearance of funds. The payment itself will not be passed to the Local Planning Authority until it has been cleared, and 'you understand' that time for the decision to be made does not begin until the Authority has the funds. But that is a different matter from the time of passing the application itself to the Local Planning Authority, which will happen (not immediately the application is uploaded, but) 'when we have received and processed' the payment made by the payment service.

19. There are detailed provisions relating to the time that it will take for funds to make their way through the system. Appendix A to the Terms shows that where larger sums (as in the present case) are paid by Faster Payments or BACS, they are expected to be cleared 'the day payment is received by our bank' and that it is when the funds are cleared that the application is released, 'immediately', to the Local Planning Authority. The payment is forwarded to the Local Planning Authority one working day later. However, 'You acknowledge that Payments made to us may be subject to merchant processing delays or payment reviews' (paragraph 2.8) and 'We will not be responsible if funds are not cleared within the time specified for a particular payment method in Appendix A' (paragraph 3.2).

20. The same in essence is what was said in emails generated automatically and sent to the person engaging with the PP on the claimant's behalf, to which brief allusion is made at [6] above. At 4.36 pm on 4 March 2025, the receipt of the application was acknowledged, but 'payment is now required before the application can be submitted to [the Council] … Click Here to Pay'. At 5.05 pm there is an acknowledgement of the receipt of payment instructions. 'You will receive a confirmation email once the payment … has been made. IMPORTANT: the application will not be submitted to the Local Authority until payment has been received.' The claimant's bank records show that the payment out was made by the bank at 5.09 pm. In fact it was not until 3.16 pm the following day that the PP emailed to say that the payment had been received: it was 'made by bank transfer and processed on 05/03/2025 09:06:08' (ie just after 9.08 am that day).

21. The general advice, the Terms, and the emails make it clear that when an application is made through the PP, the Local Planning Authority will not have it until the fee is processed. At that point they will have it, although the fee, already paid by the applicant, will be sent to the Local Planning Authority only later. In addition, a delay arising out of the processing of the payment, or a simple failure of expectation of the timescale, is at the risk of the applicant.

22. In fact there was some sort of delay, during the night while the payment was processed, and during the day on 5 March after the payment was cleared. Those delays have not been explained, and do not need to be, because of the risk the claimant took through acceptance of the PP's terms. The payment was not cleared until 5 March and so the application was not forwarded to the Council until 5 March. It was therefore made on 5 March.

23. There is a second way of reaching the same result, by reference to article 2 of the DMPO. Sub-paragraphs (2) to (7) apply to the use of electronic communications, specifically including where electronic communications are used 'for the purpose of fulfilling any requirement in this Order to give or send any application … to any other person; or lodging an application … or other document mentioned in article 34(4) or (5) with an authority mentioned in that article'. The present application falls firmly within those provisions. Sub-paragraph (4) is as follows:

> The requirement is fulfilled, or (as the case may be) the application or other document is taken to have been lodged, if the document transmitted by the electronic communications is—
> (a) capable of being accessed by the recipient;
> (b) legible in all material respects; and
> (c) sufficiently permanent to be used for subsequent reference.

24. The document would not be released to the Council, and so was not capable of being accessed by the recipient until the payment had been cleared, whenever that might be. As it happened, that was the day after the application was uploaded to the PP. Even if the claimant were right to say that the PP was the Council's agent it could not be that simply uploading the application electronically would bring it to the Council, because everybody must have known and understood that it would not be released until payment was cleared, and so would not be 'capable of being accessed' until then. The claimant's simple denial of that feature of the system ('once an application [is] with the PP, it is plainly "capable" of being accessed by the Council, given the Council itself has made arrangements to receive applications in that [manner])" obviously takes the matter no further.

25. Subparagraph (6) is also of significance in this case:

> Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday or public holiday.

26. The Council states that after 5 pm is outside its business hours, and there has been no viable claim that that is not correct. By making provisions for payment that could not

realistically be completed before 5 pm, the claimant was itself delaying receipt of any electronic communication of the application to the next working day.

27. I conclude that the application was made on 5 March. That is the result whether one considers what did happen, what was bound to happen, what was known to be going to happen, or what was deemed by the DMPO to happen: paragraphs [7], [6], [17]-[22] and [26] above respectively.

28. 5 March was beyond the period of 18 months allowed by the original planning permission, so it would appear to be out of time. Ms Parekh, however, relies on R v Bromley LBC ex parte Sievers and another (1981) 41 P&CR 294, a decision of a Divisional Court, Shaw LJ and Kilner Brown J, to argue that the application should nevertheless be regarded as being in time.

29. In that case (where the basic facts were very similar to the present) the last day of the period (three years) for making the application was a Sunday. The Council's offices were closed on both Saturday and Sunday. The developer's agent took the application to the office on the Monday, the first working day after the expiry of the period. A considerable part of the judgment is devoted to the process by which a perhaps bulky and complex application, necessarily in those days a physical entity, was to be 'lodged' with the Council (under the predecessor of art 11 of the DMPO) or 'left' at its office (pursuant to s 231 of the Local Government Act 1972). Shaw LJ decided that in either case something more was required than dropping it through the letter-box (which would have been possible at the weekend) and that it needed to be deposited with 'some responsible officer'. No such officer having been available while the offices were closed,

> "making allowances for the state of affairs at the Town Hall on the Sunday, I would hold that Monday, January 24 was not later than the expiration of three years beginning with the date of the grant of outline planning permission" (p 298).

30. Having reached that conclusion, that the application was in time, which was dispositive of the case, he went on to observe obiter, first, that the Council had acted in an arbitrary and unfair manner in taking the delay against the developer when they had subsequently spent a long time dealing with the matter, and secondly that 'the lateness, if any, was de minimis, and no legal consequence should be founded on it'.

31. The defendant submits that Sievers should not be followed because it is 45 years old and various things, in particular the general attitude to compliance with time limits, have changed since then. I do not think that is quite enough, but there are other matters to take into account. The first is that I have not been referred to any decision following or applying Sievers, which is surprising if it is properly to be seen as establishing, 45 years ago, a general rule that, in planning matters, making an application one day late is regarded as making it in time. The second is that in Birmingham City Council v Bravington [2023] EWCA Civ 308, the Court of Appeal cast considerable doubt on the basic premise of Shaw LJ's judgment. Newey LJ (who gave the leading judgment) referred to Lord Newborough v Jones, [1975] 1 Ch 90, where a valid notice under the Agricultural Holdings Act had been properly 'left' at the tenant's address by being slipped under the door, where in fact it went under a mat and was not seen. He continued as follows at [31]:

> Lord Newborough v Jones does not appear to have been cited in Sievers. In any event, since Sievers was a decision of the Divisional Court, it is not binding on us and, for my part, I cannot see why dropping a document in an appropriate letter box should not constitute "leav[ing]" it at the relevant address for the purposes of either section 231 or section 233 of the 1972 Act.

32. Thirdly, Sievers is clearly distinguishable, on at least two bases. The first is that the last day, indeed the last two days, of the prescribed period were days on which it was impossible to lodge or leave the application with the Council. The second is that as this was a bulky physical application, it needed to be committed to the charge of an official. Those interlocking features of the case enabled Shaw LJ to treat the application as in time. Neither of those features exists in the present case. There was no inhibition on making the application, electronically if the claimant chose to do so, on the last day or last two days (4 March 2025 was a Tuesday) of the prescribed period, and if electronic communication were chosen, it had its own provisions for the process of sending the relevant documents to the Council or lodging them with it. Further, the introduction of specific provisions for electronic communications in art 2(2)-(7) of DMPO seems to me to supersede the principles of Sievers when electronic communications are used: this is perhaps particularly so in the specificity of subparagraph (6), to which I have referred above. Shaw LJ's comments on what the position would be if the application had not been in time were, as I have said, obiter. I am not bound by them and in the light of the specific statutory provision in s 93(4)(b) I am not tempted to follow them despite the fact that s 43(7) of the 1971 Act was in identical terms.

33. I conclude in relation to ground 3 that the application was made out of time. The permission therefore lapsed. Ground 3 fails.

Making the decision: ground 2

34. That being the case, ground 2 is of lesser importance, because whoever made the decision it would have been to the same effect, subject to one reservation which I will come to. I accept, however, the defendant's submissions on this point, based partly on the evidence of the procedure within the Planning Inspectorate over many years.

35. In principle it is perfectly clear that the Secretary of State, as a Minister of the Crown, can make decisions by officers, and the officers act in the name of and as the Minister: that is the Carltona (Carltona Ltd v Commissioners of Works [1943] 2 ALL ER 560) principle, and it is not delegation. The only hindrance could be where a particular function is reserved, by law or by published guidance, to some particular person or class of persons: but there is no such restriction applicable here. The published guidance tends to suggest (at para 6.1) that the question of validity will be decided administratively, saying 'we will check whether it is valid', whereas references to an inspector are in the third person. No statutory provision to which I have been referred indicates that only an inspector can decide whether a purported appeal is a valid appeal.

36. In particular, contrary to what Ms Parekh argues, although by virtue of paragraph 1 of Schedule 6 to the 1990 Act, appeals are to be determined by inspectors, the administration and triage of planning appeals, including the rejection of invalid appeals, is not reserved to inspectors. As Mr Smyth points out, it is not a matter in which any question of planning judgment arises, and the special training of inspectors is not

required. In the present case, it was a matter of consulting the calendar and knowing that the Council had no power to extend time. Recognising that an appeal is invalid is not determining it: if the appeal is invalid, there is nothing to determine.

37. The fact that the question of whether an appeal was in time is not finally decided by the local planning authority but may, in certain circumstances, be decided by an inspector, as R v Bath and North East Somerset Council [1999] 1 WLR 1759 shows, does not help the claimant. As Langstaff J said in Newcastle-upon-Tyne City Council v Secretary of State for Communities and Local Government [2009] EWHC 3469 (Admin) at [40]:

> "it seems to me that it is for the Secretary of State to decide how to resolve the issue of validity which it is open to him on any appeal to resolve. It is not for the local planning authority to dictate to him the form in which he will do that. It is agreed that he will need to resolve the question of validity as a precondition for allowing any wider appeal but it is for him, as it seems to me, to judge what is the most effective procedure by which he should do that. There is nothing unlawful in my view in his taking a pragmatic approach. It may well be that if what informed his choice in this particular case was a view of the test of validity to be applied, which was erroneous as it appears to me to be for the reasons I have given, then he might otherwise have adopted a more summary procedure, but that, as it seems to me, must be a matter for him and it is not something upon which this court would dictate any particular conclusion."

38. The Secretary of State is entitled to decide that officers shall determine validity. If in some appropriate case it is said that the wrong decision has been made, that may give grounds for a challenge to the officer's decision, possibly including an assertion that the matter was doubtful and the officer ought to have allowed the matter to progress to an appeal before the inspector. But the grounds of such a challenge would have to be based on the merits of the case, not the identity of the decision-maker.

39. The reservation, to which I referred at [33] is that Ms Parekh suggests that the Secretary of State could, by an inspector and in the context of an appeal, extend time for an application of this sort. If that is right, it is important, because it means that despite my decision on ground 3, there might properly have been a different result if the decision on timeliness had been made by an inspector. But I have no reason to think it is right. It would be apparently contrary to s 93(4)(b), which does not express any exception based on a possible extension of time in an appeal. It would also make some of the authorities cited in this claim rather difficult to understand. In Sievers, for example, there would have been an adequate alternative remedy. In my judgment, the validity of the notice of appeal in the present case depended on the fact that the application was late. That made the appeal invalid, and the Secretary of State was entitled to say so, through an officer, and without troubling an inspector.

40. Ground 2 therefore also fails. The claim is dismissed.