



**FLADGATE FIELDER**  
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OUR REF DPD/CJ/Eruf

YOUR REF

DATE 10 November 1994

Attention of A J Sandal

Dear Mr Sandal,

**JEFFREY SEGALL -v- THE SECRETARY OF STATE FOR THE ENVIRONMENT and THE UNITED SYNAGOGUE ERUV COMMITTEE**

Further to our recent telephone conversation regarding this matter, I understand you will shortly be receiving a letter from The Grangewoods Partnership confirming that Fladgate Fielder are representing the Second Respondent in this action.

I had a lengthy telephone conversation yesterday morning with a Mr Freer, Crown Office Solicitor regarding the timing of the issue of the Applicant's Notice of Motion. You will no doubt be aware that Section 288(3) of Town and Country Planning Act 1990 and RSC Order 94 requires that the Notice of Motion must be issued and served within 6 weeks of the date of the Secretary of State's decision letter. Case law has established that the period is absolute, and the effect of the time limit is to render unimpeachable any decision not challenged within the time. Furthermore, time runs from the date of the decision letter itself - in this case Tuesday 20 September 1994. On this basis, I have calculated that the six week period actually expired at midnight on 31 October 1994.

The Notice of Motion has been dated 31 October 1994 by hand, although there is no Court seal confirming this nor is any Crown Office reference present on the face of the document. Having queried this with Mr Freer it transpires that the Notice of Motion was actually issued and entered in the Crown Office Register on 1 November 1994 and is therefore out of time.

Again, although the Applicant's Solicitors' covering letter and High Court papers were delivered by hand to Fibbens Fox on 31 October, I understand from Graham Murdoch of that firm that the Notice of Motion received does not have a Court seal nor a Crown

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ANDREW KAUFMAN JANET KEELEY LYNN POVEY PETER D P FITZ GERALD STEPHEN THAIR JULIUSZ WODZIANSKI SIMON EKINS BARRIE BARKER AVRAM KELMAN DANIEL SHIER  
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Treasury Solicitor

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Office reference number. Nor have we been served with the Applicant's evidence in sworn form. I attach a copy of Mr Murdoch's letter and enclosure which sets out the factual position.

The Crown Office is therefore minded to write to the Applicant informing him that it is their intention to close the file and put them to proof that the relevant documentation was lodged at the Crown Office on 31 October 1994. If they cannot discharge this obligation, the action will be struck out.

This of course is the most cost effective option. There is, however, a tactical dimension arising which I think we need to discuss. If the statutory appeal is dismissed at this time, there would still remain open the possibility of an action for judicial review of the Secretary of State's decision letter being commenced by some other disgruntled third party objector to the Eruv - the three month window for such action to be brought does not expire until midnight on 19 December 1994. If an application to dismiss the present action is not made until after that date has passed, we may at the same time have prevented an action for judicial review being used as the only alternative, subject of course to the discretion of the Court to extend the three month deadline. I would welcome your own view as to how this discretion may be applied in practice.

My only concern is whether we should respond to the Notice of Motion at this stage by taking the point that it has been issued out of time, or whether it is safe to treat the Notice of Motion as ineffective and therefore one that does not require any response from us. As yet, I do not see we are under any time pressure since we have not been served with the sworn evidence.

Obviously, I have not spelt all this out to the Crown Office but have simply asked Mr Freer to hold off taking any further action pending my discussing matters further with the Treasury Solicitor.

I look forward to hearing from you once you have had an opportunity to consider the above.

Yours sincerely,

DANIEL DRUKARZ