

BY HAND

DPD/14317/1

John Steel QC
4/5 Grays Inn Square
London WC1R 5AY

25 November 1994

Dear Mr Steel

Jeffrey Segall v The Secretary of State for the Environment and The United Synagogue Eruv Committee

Thank you for sparing the time to discuss this matter on the telephone today. As you have kindly suggested, I enclose various recent exchanges of correspondence in order to up-date you. In chronological order these are:-

1. Letter to Fladgate Fielder from Fibbens Fox dated 9th November 1994.
2. Letters to The Crown Office, Treasury Solicitor and Sayer Moore & Co, all dated 10th November 1994.
3. Letter to Fladgate Fielder from Sayer Moore & Co dated 10th November together with the Notice of Motion issued on 1st November 1994 and supporting Affidavit sworn on the same day.
4. Letter from Fladgate Fielder to Sayer Moore & Co dated 14th November 1994.
5. Letters from The Crown Office to Fladgate Fielder and Sayer Moore & Co both dated 23rd November 1994.

Mr Sandal of The Treasury Solicitor telephoned on 14th November in response to my letter to say that his department's practice has been to start counting the six week period from the day following the actual date of the decision letter. On this basis, he calculates that the six week period expired on 1st November, rather than the 31st October. He bases this view on the House of Lords decision in *Griffiths v The Secretary of State for the Environment* (1983 2AC 51).

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My understanding of the Griffiths case, however, is that it does not definitively answer the point - rather it was concerned with whether or not the postal rule applies to ascertain when time begins. It simply demonstrates that time runs from the date of the decision letter itself (i.e 20th September 1994 in this case), rather than from when the decision letter was actually posted. Nor are the recent cases referred to in the Planning Encyclopedia - Court of Appeal decision in *Low v Secretary of State for Wales and Glyndwyr District Council* 1994 JPL 41 and *Stainer v Secretary of State and Shepway District Council* 1994 JPL 44, particularly helpful on that point either.

The Crown Office has of course now put the cat among the pigeons. Accordingly, I would be grateful for your advice on the following:-

1. Is my assumption that the applicant was out of time in issuing the Notice of Motion on 1st November 1994 correct? If Order 3 Rule 2 RSC 1981 applied then there would seem to be some force in the Treasury Solicitors' argument; but rule 1 expressly states that Order 3 applies only to periods of time fixed by "these rules ... or by any judgment, order or direction" and does not seem to include the provisions of S.288 of the TCPA 1990.
2. If Mr Segall should try to circumvent the statutory route by bringing an action for judicial review, whether leave would be granted by the Court and if so, the likelihood of any such challenge being successful if framed along the lines that the Secretary of State exceeded his jurisdiction.
3. In light of the above, the optimum tactical course to pursue.
4. Procedural matters generally.

I understand that you will be able to consider the points on Monday 28th November and will hopefully be able to fax your response to me the same day.

Once again may I say on behalf of my colleagues on the Eruv Committee that your help is very much appreciated.

Kind regards

Yours sincerely

DANIEL DRUKARZ