LAW

When serving writs, don't wait until the last minute, writes *Colin Reese*

WHEN TIME IS OF THE ESSENCE

A High Court action commences when the writ ink seal of the court office is stamped on the writ. At that moment the writ is issued and time stops running under an limitation is conveyed.

Having issued the writ, the litigant must arrange for its service on the defendant. It must be served within 12 months of issue, unless the court can be persuaded to extend the time. As a general rule the court will not exchange its discretion in favour of the renewal of a writ after the period allowed for service has expired if the effect of doing so will be to deprive the defendant of the benefit of a limitation period.

The general attitude of the court in such cases was well expressed by Sherman CJ in Baker v Bloodcare Cyles Ltd [1986]. He said: "The only matter which has given me pause, . . . was the matter of trying to serve the defendants by post in the last two days. Now it is true that you may wait until the 364th day of the third year before issuing your writ and until the 364th day of one year more before serving it and you will still be in time. If you choose, however, to wait until the last moment like that, you must be very careful to be right and there is no reason why you should be given any further indulgence. The reason you are to the last moment, the more you ought to be the attitude of the court, . . ."

In that case the plaintiff was suing for damages for personal injuries and the relevant limitation period was three years. In most construction disputes the relevant limitation period will be six years, but the same general principle will apply.

Being "very careful to be right" when arranging service of a writ necessitates a careful study of the rules laid down by the court for personal service or postal services. The technical nature of these rules, and the sort of arguments to which they give rise, is illustrated by the facts of Anstiss Rixon Group Ltd's Consult Ruffer Europe Associates [1986].

The plaintiffs issued a writ on 28 December 1985 against the architects, alleging negligence in the construction of an office block. The writ was not served until December 1986. It was sent by post to an address which the plaintiffs' solicitors thought was

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the defendants' principal place of business. The rules of court permit service on a firm "by sending a copy of the writ by ordinary first class post, . . . to the firm at the principal place of business". In fact, the defendants had moved offices in about September 1984. However, the defendant had made arrangements with the post office for all mail to be redirected. The writ in fact arrived at the new address on 23 December 1986 – six days before its service validity expired.

Had that writ been properly served in time? A majority of the Court of Appeal held that it had. May LJ and Sir John Megaw were persuaded that sending by ordinary first class post involved both posting and delivery.

Since the writ was held to have been properly served in that case, the question of extending its validity did not have to be decided. However, the same majority stated that had the service been technically invalid, the court's discretion ought not to have been exercised to permit a later valid service. The dissenting judge, Lloyd LJ, disagreed on both grounds. In his judgment, the service had been technically invalid but the discretion to extend validity had been properly exercised.

PLANNING

Delays are the major bugbear of the planning system, writes *Nigel Moor*

PLANNING UNDER THE MICROSCOPE

This country's system of town and country planning – hailed and scorned for most of the last decade – is currently facing the closest scrutiny since the system was put into place after the Second World War.

Environment secretary Nicholas Ridley has put forward his consultation document, The future of development plans, the Opposition has published a draft manifesto which promises extended planning controls and the introduction of a Ministry of Environmental Protection Services; the Royal Town Planning Institute has published a report on social and economic changes and promises another on metropolitan and strategic planning; the Nuffield Foundation has published its long-awaited inquiry into the planning system; and the House of Commons Environment Committee chaired by Sir Hugh Rossi has published its report dealing with planning appeals.

The average planner is probably reeling over backwards, both under the sheer weight of paper containing all of the advice and because of the conflicting roles that are being proposed.

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One common theme emerging from all of this well-intentioned advice is the increasing impatience most commentators feel for the delays that seem inherent in the present planning system.

In last week's Building Interview, Nicholas Ridley bluntly stated: "Good planning is not made better by endless delay." He also feels the good

grace to admit that some of the responsibility for these delays lay with his own department at Marsham Street – a point frequently emphasised by the RTPI. No one anywhere can seriously defend the present delays built in to the development process.

Ridley wants county councils to prepare strategic policies and a range of planning issues which would form part of the framework for the preparation of a single tier of development plans prepared by district authorities. County strategic policies would include major highway schemes, minerals, waste disposal, provision for housing land, and major retail and industrial developments.

Streamlined procedures would be introduced for district plans. The public consultation and objection stages would be combined with districts being encouraged to consult the public informally at an earlier stage than at present. The forced inquiry following local public inquiries would be shortened.

The government would not approve the county statements although there would be reserve and powers to intervene if necessary. The district development plans would similarly not need approval although there would be reserve powers to direct modifications or for call-in, as at present.

The aim would be to have a single district development plan for each district. The consultation paper also sees a case for extending county powers to some other types of development – large retail developments and major housing schemes.

The necessary legislation is unlikely to be introduced in the present session of Parliament but this at least will allow time for a careful consideration of the government's proposals.

Hopefully the proposals in the consultation paper might gain a wide body of support rather than simply be pinned on the "present government's pro-development manifesto and consequently damaged if the Conservatives do not hold the next administration

LATHAM MP

Christopher Chope's appointment was the last in Margaret Thatcher's reshuffle. *Michael Latham* MP looks at the final cabinet changes.

ADMISSIONS AND OMISSIONS

Now that the new team is in office, and presumably intended to remain there until the general election, I have again the depressing task of commiserating with the reserves who remain sitting on the treasury benches. Some of them have been ignored so often by the manager that they would have been seeking a transfer by now if they really were professional footballers. I have identified – without any difficulty – 40 Conservative backbench MPs who have an excellent case for junior office. Five of them are in their first parliament so can realistically still hope. They are chartered surveyors John Butterfill and Gerald Bowden; town planners Ian Twinn, former NSDC official Robert Jones; and local government leader John Mark Taylor. Any of them would be suitable for the DOE, and I hope they will eventually find their way there.

Another 15 have the necessary ability, but seem to have disqualified themselves for one reason or another. Most of that group, such as Boothroyd Paul drawing David Mellor, arts and heritage buff Patrick Cormack, transport and roads specialist Peter Fry, or local government and housing expert Robin Squire, are too independent and outspoken to

> "Three backbench specialists on housing, land and construction have been ignored"

handle such nonsense – either play it cool like Chope, or meet it head on with a Harvey Smith salute à la Rhodes Boyson or Currie. If the baroque newspeak has the necessary parliamentary talent, he soon sees off the knockers

> "If a famous newcomer has the necessary talent, he soon sees off the knockers"

Obviously Twinn and Chope, as ambitious people, had not seen that the expected successors had not involved with this [illegible] theory. They had [illegible] to major [illegible] family [illegible] to new neighbours. Another Baron – and it does not seem to have done either of [illegible] Baron. He leads one [illegible] Tory MP to [illegible] Johnny bought a [illegible] last year so [illegible] to establish [illegible] and my view if the [illegible] to make him a perfect [illegible] Tory.

I cannot claim to know Chope well – although, ironically, we [illegible] at the same [illegible] years of each [illegible] he has enjoyed a fairly [illegible] during his three terms [illegible] Parliamentary [illegible], say, [illegible] Cabinet. That was [illegible] of him. He came to the [illegible] with a commercial [illegible] as the only [illegible] Wandsworth Borough [illegible] Group of the local [illegible] and chairman [illegible] boss from a tough area of local politics. Reputations of that kind can be helpful to new MPs. Labour MPs are unlikely to be too generous to the Tory newcomer. Some of the older Tories adopt a "let's cut this fellow down to size" attitude, as if he were their fag at Eton rather than a duly-elected parliamentary representative like them. There are two ways to

> "Three backbench specialists on housing, land and construction have been ignored"

deal however. In the lady's phrase, they are "not one of us". I fear that the very able Anthony Nelson must be viewed in the same light. Although he has been in Parliament for 11 years, is still only 38 and has served as a parliamentary private secretary to DOE ministers, he has obviously rubbed someone up the wrong way, since his qualifications for office are very strong.

Among other MPs, estate agent and property developer Andrew MacKay, chartered surveyor Neil Thorne, Building Employers Confederation adviser Malcolm Thornton and civil engineer and contractor Desmond Swayne may still have a chance. Former Taylor Woodrow boss John Ward would be an admirable choice, but he is already 63 years old, and that is perhaps a little late to begin a ministerial career. John Hannam, the leading Conservative expert on the housing problems of the disabled, should have been in Ted Heath's government by 1972, let alone Thatcher's in 1979. Very popular and capable, it is a disgrace that he was never a minister. He is now 62, and his chances must be slim. They may also limit the prospects of local government expert Michael Shersby, who is 55, whereas Chope is 39 and Currie is 40 this month.

Three backbench specialists on housing, land and construction have been shamefully ignored. Michael Morris did sterling work as an Opposition spokesman from 1975 to 1979. John Hobday, surveyor and property expert, has been chairman of the Parliamentary Environment Committee for several years, and has consistently and loyally supported ministers in the DOE with speeches and questions in the house. He has all the requisite knowledge, experience and debating skill, and it is quite extraordinary that he remains on the backbenches.

But the most depressing omission of all from the DOE team is Anthony Chapman, architect and town planner, always loyal to the government, a very hard parliamentary worker and immensely experienced in all matters relating to the construction and property industries. He is totally qualified for DOE office or, indeed, for several other ministries as well. It is a great shame that he has never been asked. Let us hope that there is still time and chance.