Neutral Citation Number: [2023] EWHC 1504 (Admin)

Case No: CO/2451/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

Wednesday, 21st June 2023

Before:
MR JUSTICE FORDHAM

- -

Between:
LEEDS CITY COUNCIL

Appellant

-and-
PERSONS UNKNOWN

Respondents

- -
- -

Kuljit Bhogal KC (instructed by Leeds City Council) for the **Appellant**

- -

Hearing date: 5 May 2023

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

- -

THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

INTRODUCTION

1. This is a case about compulsory powers to effect "closure" of "premises", pursuant to Part 4 Chapter 3 of the Anti-Social Behaviour Crime and Policing Act 2014 ("the 2014 Act"). There are two issues. One centres on the legally correct meaning of "the premises" in s.80(6) ("the Premises Issue"). The other centres on the legally correct meaning of "all persons except those of a specified description" and "all circumstances except those specified" in s.80(7)(a)(c) ("the Prohibition Issue"). The case comes before me as a case stated appeal by the Council, against a ruling dated 26.4.22 by Leeds Magistrates Court ("the Court"). The Council had issued three s.76 Closure Notices and the Court (on 4.2.22) had made three s.80 Closure Orders. The Council applied for s.82 extensions of those Closure Orders. The ruling (26.4.22) refused those extensions. That was because the Court was not satisfied that the Closure Orders sought to be extended fell within the scope of the statutory power to make Closure Orders.

Reasons

2. In its Orders refusing the extensions, the Court gave these Reasons (numbered by me as Reason [1] to [4] for ease of later cross-referencing):

> ***[1] The application does not meet the definition of particular premises, as set out in the 2014 Act, in order for the court to consider the extension. [2] Further the legislation is designed to prohibit access by all people/at all times/in all circumstances except to those specified by the court. [3] There is a positive expectation that the court will detail the access allowed and not, as in these cases, that which is not allowed. [4] The type of behaviour to be addressed is provided for by Public Spaces Protection Orders in the same Act.***

Reason [1] was a conclusion on the Premises Issue. Reasons [2]-[3] were a conclusion on the Prohibition Issue. Either conclusion was fatal to the applications for extensions. Reason [4] was a point about the s.59 power to make Public Spaces Protection Orders ("PSPOs") governed by Part 4 Chapter 2 of the 2014 Act.

Questions

3. In the Stated Case for this appeal, the Court has posed two Questions of law for me to answer. Question (a) raises the Premises Issue:

> ***Question (a). Was the Court correct in construing the definition of "premises" to relate only to "particular premises" which could not, as a matter of law, include open spaces to which the general public had access, namely a street or several streets as defined by maps attached to the Orders?***

Question (b) raises the Prohibition Issue:

> ***Question (b). Was the Court correct in construing section 80(7) of the 2014 Act, to require a positive exception of specified access permitted, detailed in the Order, or could the Order be phrased so as to exclude only those persons (unknown) engaged in a specified activity, such as 'car cruising'?***

Grounds of Appeal

4. The Council advances three Grounds of Appeal. These make reference to the Home Office Statutory Guidance on the 2014 Act, the current edition of which is dated March 2023. Ground (1) relates to the Premises Issue (Reason [1] and Question (a)):

> ***Ground (1). The Magistrates erred in law in their interpretation of the word "premises" as defined in s.92(1) of the 2014 Act in that: (i) They failed to heed that that the statutory definition of "premises" expressly permits the closure of premises which are not enclosed. (ii) They imposed an additional, non-statutory, requirement that the premises to be closed must be a piece of property having access points to which a notice/order could be affixed. This is not a requirement of the 2014 Act or the Statutory Guidance for Frontline Professionals.***

Ground (2) relates to Reason [4]:

> ***Ground (2). The Magistrates further erred in taking account of the availability of Public Spaces Protection Orders (PSPOs) as a reason to reject the Council's application for an extension to its closure orders.***

Ground (3) relates to the Prohibition Issue (Reasons [2]-[3] and Question (b)):

> ***The Magistrates further erred in their interpretation of section 80(7) of the 2014 Act in holding that they were required to specify the groups that were permitted access (as opposed to those that were not); there is nothing in the legislation or guidance which prescribes that way in which the section 80(7) factors are addressed in the order and no reason to suggest that the order must specify all of those who are permitted access. To the contrary, the legislation is designed to allow orders to be targeted at those who are involved in the impugned behaviour (precisely as the Council's draft orders sought to do).***

A One-Sided Case

5. In the Stated Case the Court records that there was "no respondent to the applications, capable of being heard by the Court, as the [Closure] Notices are addressed to persons unknown"; that "no notice of the applications were served on any person"; that the Court was "unable to consider issuing summonses to any persons under s.82(5); and that the Court was unable to serve the draft Stated Case on any person. On the appeal, The Court was acknowledging that this is a one-party case. I am in the same position. This is an uncomfortable position which raises an anxious concern. How does a court properly decide issues of law from hearing one side of the argument? I invited submissions on this point. Ms Bhogal KC accepted that, if there were arguments which could be made against her client's position in this appeal, these and any materials in support should be identified by her for the Court. I am sure she is right. Having said that, Ms Bhogal KC's submission on behalf of her client remained that this appeal is unanswerable. The only argument which she acknowledged could be made was that the Court was correct in law for the reasons it gave. I considered whether it might be appropriate to invite the appointment of a 'friend of the court' (an 'amicus'), to stand in the place of the voiceless 'Persons Unknown' and identify arguments in opposition to the appeal. In the event, I was satisfied that it was sufficient for the purposes of the present case that I deal with the Council's arguments, relying on the Court's resources to identify any key difficulties with them and any key counter-arguments, on what are essentially questions of statutory interpretation.

Interpretation and Application

6. I have described the issues as centring on "the legally correct meaning" of certain provisions of the 2014 Act (§1 above); the Court having concluded that the Closure Orders "did not fall within the scope of the statutory power" (§1 above); and the Court as posing questions of "law" as to whether it was "correct" (§3 above). This is a case raising questions about whether the nature of the Exclusion Zones and the nature of the Prohibition fit with the statutory language governing Closure Orders. It is important to watch out for a trap which can ensnare lawyers and courts when questions arise about whether facts and circumstances fit with statutory language. The trap is to assume that all such questions are questions of "law", for hard-edged substitutionary correction by a court with a jurisdiction to correct an error of "law". The assumption is false. Sometimes, whether the statutory language fits with the facts and circumstances is not a binary hard-edged question. Sometimes, it is a soft question which allows for evaluative judgment, which evaluative judgment involves no error of "law", provided that it was procedurally fair and substantively reasonable. What I am describing is the basic distinction between 'interpretation' and 'application'. Interpretation requires the identification of any objectively correct meaning. Application requires an objectively reasonable evaluative judgment, informed by the objectively correct meaning. Application starts where interpretation ends, where the function has been exhausted, of explaining what a provision means. Application is about evaluative judgment, which is often a better description than "discretion". In the end, what may matter is the exercise of evaluative judgment in fairly and reasonably applying the provision to individual facts and circumstances. In crown court trials, where interpretation ends there is a 'jury question'. In public law, where interpretation ends there is a question for fair and reasonable application. I must keep a watchful eye on whether questions are truly questions of "law", and where the limits are of statutory interpretation. I do so, conscious that the Court in the present case has concluded that the Closure Orders did not fit with the statutory scheme as a matter of "law".

THE STATUTORY SCHEME

The 2014 Act

7. The 2014 Act makes provision about "anti-social behaviour, crime and disorder". Part 4 is concerned with "community protection". An appreciation of the 2014 Act is assisted by the Explanatory Notes to the 2014 Act; the May 2012 Home Office White Paper which preceded the 2014 Act (Explanatory Notes §12); and the Statutory Guidance. The 2014 Act took 19 pre-existing powers (summarised in Annex B of the Explanatory Notes and listed in Annex B to the White Paper) and replaced them with 6 new powers. These are civil law powers can come to be used "as a means of preventing or punishing criminal conduct" (see Birmingham City Council v James [2013] EWCA Civ 552 [2014] 1 WLR 23 at §21), something which will properly calls for judicial vigilance. There had been 7 pre-existing powers for dealing with anti-social individuals: (1) the anti-social behaviour order on conviction; (2) the drinking banning order on conviction; (3) the anti-social behaviour order on application; (4) the anti-social behaviour injunction; (5) the drinking banning order on application; (6) the individual support order; and (7) the intervention order. In the 2014 Act these were replaced by: (i) civil injunctions to prevent anti-social behaviour (described as 'crime prevention injunctions' in the White Paper) (Part 1 of the 2014 Act); and (ii) criminal behaviour orders (Part 2 of the 2014 Act, later relocated to the

Sentencing Code 2020). The basic purpose of civil injunctions to prevent anti-social behaviour is to stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate. Criminal behaviour orders are orders of a criminal court against a person convicted of an offence, to tackle the most persistently anti-social individuals who are also engage in criminal activity. There had been 12 further pre-existing statutory powers for dealing with anti-social behaviour in the community. In the 2014 Act these were replaced with 4 new powers. Three pre-existing powers – (8) the litter clearing notice; (9) the street litter control notice; and (10) defacement removal notices – were replaced by (iii) Community Protection Notices (Part 4 Chapter 1 of the 2014 Act). The basic purpose of a Community Protection Notice is stopping a person, business or organisation committing anti-social behaviour which spoils the community's quality of life. Two pre-existing powers – (11) the dispersal order and (12) the direction to leave – were replaced by (iv) Dispersal Powers (Part 3 of the 2014 Act). The basic purpose of Dispersal Powers is to require a person committing or likely to commit antisocial behaviour, crime or disorder to leave an area for up to 48 hours. Three pre-existing powers – (13) the designated public place order; (14) the gating order; and (15) the dog control order – were replaced by (v) PSPOs (Part 4 Chapter 2 of the 2014 Act). The basic purpose of a PSPO is to stop individuals or groups committing anti-social behaviour in a public space. That leaves four pre-existing powers to make closure orders in relation to premises. These were: (16) the crack house closure order (Part 1 of the Anti-Social Behaviour Act 2003); (17) the anti-social behaviour premises closure order (Part 1A of the Anti-Social Behaviour Act 2003, as amended in 2008); (18) the noisy premises closure order (sections 40-41 of the 2003 Act); and (19) the section 161 closure orders (section 161-170 of the Licensing Act 2003). The 2014 Act replaced these four powers with (vi) Closure Orders (Part 4 Chapter 3 of the 2014 Act). The basic purpose of a Closure Order is to allow the police or council quickly to close premises which are being used or likely to be used to commit nuisance or disorder. Not all species of premises closure orders were replaced by Closure Orders pursuant to Part 4 Chapter 3 of the 2014 Act. In particular, closure orders pursuant to Part 2A of the Sexual Offences Act 2003 remained regulated by that Act.

Closure Notices

8. A Part 4 Chapter 3 Closure Order must be preceded by a Closure Notice. Section 76 of the 2014 Act confers on a police officer of at least the rank of inspector, or the local authority, the power to issue a Closure Notice (s.76(1)):

> ***if satisfied on reasonable grounds – (a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or (b) that there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.***

A Closure Notice can (s.76(3)):

> ***prohibit access – (a) by all persons except those specified, or by all persons except those of a specified description; (b) at all times, or at all times except those specified; (c) in all circumstances, or in all circumstances except those specified.***

But a Closure Notice cannot prohibit access by "people who habitually live on the premises" or "the owner of the premises" (s.76(4). A Closure Notice must (s.76(5)):

(a) identify the premises; (b) explain the effect of the notice; (c) state that failure to comply with the notice is an offence; (d) state that an application will be made under section 80 for a Closure Order; (e) specify when and where the application will be heard; (f) explain the effect of a Closure Order; and (g) give information about the names of, and means of contacting, persons and organisations in the area that provide advice about housing and legal matters. A Closure Notice can only be issued (s.76(6)) if reasonable efforts have been made to inform "people who live on the premises" and "any person who has control of or responsibility for the premises or who has an interest in them" that the Notice is going to be issued. Before issuing a Closure Notice the police or local authority must "ensure that any body or individual" that they think "appropriate" has "been consulted" (s.76(7)).

Closure Orders

9. When a Closure Notice is issued, an application must be made to a magistrates' court for a Closure Order (s.80(1)). The application must be heard by the magistrates within 48 hours (s.80(3)). The magistrates may make a Closure Order (s.80(5)):

> ***if …satisfied – (a) that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or (b) that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or (c) that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.***

Pursuant to s.80(6):

> ***A closure order is an order prohibiting access to the premises for a period specified in the order. The period may not exceed 3 months.***

A Closure Order can (s.80(7)):

> ***prohibit access – (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description; (b) at all times, or at all times except those specified; (c) in all circumstances, or in all circumstances except those specified.***

Extended Closure Orders

10. When a Closure Order has been made, an application can be made to the magistrates' court (s.82(1)) to extend – or further extend – the period for which it is in force. The magistrates may extend the Closure Order (s.82(7)), for an overall maximum duration of 6 months (s.82(8)), if:

> ***satisfied … that it is necessary for the period of the order to be extended to prevent the occurrence, recurrence or continuance of – (a) disorderly, offensive or criminal behaviour on the premises, (b) serious nuisance to members of the public resulting from the use of the premises, or (c) disorder near the premises associated with the use of the premises, and also satisfied that the appropriate consultee has been consulted about the intention to make the application.***

The appropriate consultee means (s.82(4)) whichever of the local authority and the police are not the applicant for the extension. The Council accepts that an extension of

a Closure Order cannot be granted if the Court concludes that the Closure Order does not fall within the scope of the statutory power to make Closure Orders

"Premises": Limbs (a) and (b)

11. The "interpretation" provision for Part 4 Chapter 3 of the 2014 Act is s.92. It contains this, within s.92(1):

> ***"premises" includes – (a) any land or other place (whether enclosed or not); (b) any outbuildings that are, or are used as, part of premises.***

I am going to use the shorthand "Limb (a)" for "'premises' includes – (a) any land or other place (whether enclosed or not)"; and "Limb (b) for "'premises' includes … (b) any outbuildings that are, or are used as, part of premises". One feature of "premises" under Part 4 Chapter 3 is that Parliament empowered the Secretary of State by regulations to "specify premises or descriptions of premises in relation to which" a Closure Notice "may not be issued" (s.76(8)). As the Court recorded, no such regulations have been made.

Crime and Punishment

12. Pursuant to s.86, a person who "without reasonable excuse" enters or remains on premises "in contravention of" a Closure Notice or a Closure Order commits an offence, imprisonable for up to 3 months in the magistrates' court or for up to 51 weeks in the crown court. A Closure Order means that presence on the premises can, of itself, constitute the crime.

The "New Flexibility"

13. Ms Bhogal KC for the Council emphasises that the new Part 4 Chapter 3 Closure Orders power was designed by Parliament as a more flexible response by comparison to the four pre-existing powers to make closure orders in relation to premises (§7 above). This can be illustrated by taking ss.2(4)(5) and 11B(5)(6) of the Anti-Social Behaviour Act 2003, under which a closure orders was "an order that the premises in respect of which the order is made are closed to all persons for such period (not exceeding three months) as the court decides", subject to "such provision as the court thinks appropriate relating to access to any part of the building or structure of which the premises form part". That was an 'all or nothing' power. A closure order under the Sexual Offences Act 2003 s.136D(2) still is. But the New Flexibility allows for a Part 4 Chapter 3 Closure Order to be a tailored order, by reference to (i) persons (ii) times and (iii) circumstances: see the 2014 Act s.76(3) (§8 above) and s.80(7) (§9 above). The difference can be seen from R (Leary) v Chief Constable of West Midlands Police [2012] EWHC 639 (Admin), a case under the Anti-Social Behaviour Act 2003. There, the tenant's argument was that a closure order could lawfully prohibit visitors to a flat, while permitting the tenant to continue to live there (see Leary §15). The police argued that there was "no power under the statute to exclude from its ambit certain individuals such as the tenant" (§20). The Court agreed with the police (§26).

CONTEXT

The Problem

14. Turning to the present case, a problem of anti-social behaviour lay behind the Closure Notices and Closure Orders. As recorded in the Stated Case, there had been:

> ***reports of antisocial behaviour and serious nuisance, caused by planned car cruising events, drawing large crowds of spectators, watching high-powered cars, driving dangerously on the highways and in car parks in the named areas.***

As Ms Bhogal KC put it:

> ***The Council has a problem with "car cruising" in three locations within its area. Car enthusiasts gather in these locations for "meets" or "car cruises". Serious anti-social behaviour is taking place including:***
> - ***Large numbers of vehicles gathering for a "meeting";***
> - ***Vehicles being driven at excessive and dangerous speeds without regard to other roads users or other spectators/participants at the event;***
> - ***Vehicles racing against each other;***
> - ***The persistent revving of engine and the playing of loud music;***
> - ***Noise nuisance to residents;***
> - ***Littering in the area including of drug paraphernalia from drug taking;***
> - ***Public urination.***
>
> ***As many as 150 vehicles can be involved, the identities of those involved is not known and changes at each "meet".***

15. In each of the Closure Orders made on 4.2.22 the Court had recorded (at §1) that the statutory criteria for making a Closure Order were met. That meant (s.76(1): §8 above):

> ***The Court was satisfied that (a) The use of the premises has resulted, or (if the order is not made) is likely to result, in criminal behaviour on the premises, and serious nuisance to members of the public and (b) The making of this order is necessary to prevent the occurrence of such disorder or nuisance for a period of up to 3 months.***

The Council's applications for extensions to the Closure Orders recorded that the three Closure Orders had been "successful" and had "reduced the incidence of nuisance driving and the consequent calls upon police resources". Had the Court been satisfied at the hearing on 26.4.22, that the Closure Orders sought to be extended fell within the scope of the statutory power to make Closure Orders, the question would have been (section 82(7) read with (3)) whether the Court was:

> ***satisfied on reasonable grounds that it is necessary for the period of the order to be extended to prevent the occurrence, recurrence or continuance of – (a) disorderly, offensive or criminal behaviour on the premises, (b) serious nuisance to members of the public resulting from the use of the premises, or (c) disorder near the premises associated with the use of the premises …***

Because the Court was not satisfied that the Closure Orders sought to be extended did not fall within the scope of the statutory power to make Closure Orders, it did not reach this question.

<u>The "Premises"</u>

16. The three Closure Notices, the three Closure Orders and the three applications for extensions all identified the "premises" as an "Exclusion Zone" coloured yellow on a plan. Lines had been drawn on a map. Sometimes the lines followed a feature visible on the map, and visible 'on the ground', such as the edge of a road. Sometimes the

lines were drawn across the map without following a visible feature, for example by drawing a straight line across the map between two points or features on the map.

17. First, there were "the premises known as Knowsthorpe Gate and the public highways of Cross Green Industrial, Leeds LS9 as shown coloured yellow on the attached plan". This is an area south-east of Leeds City Centre, in the direction of Castleford. The Council gave me this helpful description:

> ***Knowsthorpe Gate is part of the Cross Green Industrial Estate located in the Burmantofts/Richmond Hill Ward area of East Leeds. The area covers approximately 1.25 square miles and consists of approximately 13 streets with no residential properties. Most of the buildings in this area are commercial units, including factories, warehouses, offices, recycle centres, scrap yards and retail premises that serve both the public and trade.***

When I look at the Exclusion Zone on the map, this is what I see. The Zone has the edge of Pontefract Lane (A63) as its northern boundary, from Long Causeway in the west across to just East of the Knowsthorpe Gate roundabout. It has a western boundary which follows the railway line behind Long Causeway and then Knowsthorpe Lane. Its southern boundary extends from Knostrop Sewage Works in the west along Sewage Works Road. The eastern boundary is behind and parallel to Knowsthorpe Road. I can count these streets: Belfry Road; Cross Green Approach; Cross Green Drive; Cross Green Garth; Cross Green Rise; Cross Green Vale; Cross Green Way; Harker Way; Knowsthorpe Gate; Knowsthorpe Lane; Knowsthorpe Road; Knowsthorpe Way; Long Causeway. GoogleMaps indicates perhaps 50-100 businesses, in an area 1.5km west to east and 1.25km north to south.

18. Secondly, there were "the premises known as Low Fields Road, Leeds LS12 from the junction with Gelderd Road to the north and the M621 underpass to the south". This is an area south-west of Leeds City Centre, in the direction of Huddlesfield. It is across the M621 from Elland Road Football Ground. The Council gave me this helpful description:

> ***Lowfields Road is part of the Beeston and Holbeck ward area of South Leeds. This is a cul-de-sac street approximately 0.5km long near to the Leeds United Football ground. There are no residential properties on this street which has approximately 12 commercial buildings either side.***

As I look at the Exclusion Zone on the map, this is what I see. The Exclusion Zone covers a road and its pavements. The road is Low Fields Road from its start at Gelderd Road (A62) including the Low Fields Road roundabout, to the start of Low Fields Avenue alongside the M621. No other roads are included. The businesses are adjacent to the Zone but not included within it. The Zone is about 500m long and 25m wide.

19. Thirdly, there were "the premises known as Thorpe Park and 'The Springs' Retail Park, Leeds LS15". This is an area east of Leeds City Centre, in the direction of Garforth. The Council gave me this helpful description:

> ***The Springs is part of the Temple Newsam Ward area located in the East Leeds area. This area covers approximately 5.4km2 and consists of 3 residential streets consisting of approximately 46 privately owned dwellings. The rest is made up of approximately 8 streets containing a retail park with approximately 10 retail outlets, a gym, cinema and restaurants. The rest is made up of approximately 25 office/commercial buildings and a***

> ***hotel. There is a large car park attached to the shopping complex which is extremely busy with both pedestrians and motor vehicles.***

As I look at the Exclusion Zone on the map looks like this. Its southern boundary is the edge of Selby Road (at Century Way), curving around to become an eastern boundary as the edge of the East Leeds Orbital Road, up to the roundabout at Thorpe Park Approach. The northern boundary goes west along and including Thorpe Park Approach then around behind Greggs and Pharmacy2U at and including Park Approach. The western boundary runs from and including Century Way, along and including Barrowby Road, continuing north across Barrowby Lane. It includes at least the following roads: Barrowby Gardens; Barrowby Lane; Barrowby Road; Century Way; Park Approach; Thorpe Park Approach; Thorpe Park Gardens. GoogleMaps indicates some 100 or so businesses. The residential properties include about 18 houses on the east-side of Barrowby Road; about 10 houses in Barrowby Gardens and about 16 houses on Thorpe Park Gardens. All within an area say 500m west to east and 1.25km north to south.

The Prohibition

20. The Closure Orders were each expressed in the same way. I will illustrate it by taking the Knowsthorpe Gate Exclusion Zone (emphasis added). This was the operative text of the Closure Order:

> ***It is ordered that the premises known as Knowsthorpe Gate and the public highways of Cross Green Industrial, Leeds LS9 as shown coloured yellow on the attached plan are closed to all persons listed at Appendix 1 for a period of 3 months from the date of this order until 4pm on 3 May 2022 pursuant to section 80(7)(c) of the Anti Social Behaviour, Crime and Policing Act 2014. Any person entering the premises in contravention of this order commits an offence and can be arrested.***

This was Appendix 1:

> ***Appendix 1. All persons are prohibited entry to the premises in the following circumstances: when participating in car cruising or 'car meet' events on Knowsthorpe Gate and the public highways of Cross Green lndustrial, Leeds LS9 as shown coloured yellow on the attached plan.***

Finally, there was this:

> ***NOTE: It is an offence for any person to enter or remain on premises in contravention of this Order without reasonable excuse. Any person guilty of such an offence is liable on summary conviction to a period of imprisonment not exceeding 26 weeks, or to a fine, or to both.***

21. So, in each case, the Prohibition as framed is that "the premises" are "closed to", and "entry" to "the premises" is "prohibited" to:

> ***all persons … when participating in car cruising or 'car meet' events on [the premises].***

This was described as specified "circumstances". Entry to "the premises" was being prohibited "in the following circumstances". Reference was being made to "section 80(7)(c)" (access prohibited "in all circumstances except those specified").

PSPOs

22. As has been seen, the Court's Reason [4] was that "the type of behaviour to be addressed is provided for by PSPOs in the same Act" (§2 above). The Council's Ground (2) is that the Court "erred in taking account of the availability of PSPOs as a reason to reject the Council's application for an extension to its closure orders" (§4 above). The Court has not posed a Question about PSPOs (§3 above). But the Court's reasoning on the Premises Issue, reflected in the Stated Case at §7c (§24 below) is that: "The type of behaviour the Council are seeking to prohibit and regulate, in wide sections of the City, is provided for by way of PSPOs, under Part 4 Chapter 2 of the same Act". I will need to address this as part of the analysis of the case.

23. The Council's position in relation to PSPOs, adopted at the hearing before the Court (26.4.22), is recorded in the Stated Case (at §4c) as follows:

> ***(4c) Public Spaces Protection Orders would be available, and the Council are in the process of arranging such, however, they can take up to 6 months to apply for. They also have less impact, as a breach carries only a financial penalty.***

Ms Bhogal KC's position on these points is more nuanced (§43 below). But she maintains what was said in the Council's skeleton argument before the Court (at §12):

> ***(a) It is for the applicant to first decide which order it wishes to seek in relation to the problems set out. (b) It is for the court to then decide whether the criteria set out in the 2014 Act are met and it is appropriate whether to make an order. (c) It is generally irrelevant in a particular application whether an alternative remedy might be available – there is no legal doctrine of "best fit" which the court can apply; the task of the court is decide whether the facts of the matter justify the order sought by the applicant.***

In support of that argument, Ms Bhogal KC invited my attention to the James case (§7 above). That was a case about the grant of a gang-related violence injunction (Policing and Crime Act 2009 s.34), whose lawfulness was challenged as disproportionate given the less intrusive and equally effective alternative measure of an anti-social behaviour order (Crime and Disorder Act 1998 s.1). The Court of Appeal held that it was unnecessary for a court, in dealing with an application for a (2009 Act) injunction, to ask whether a (1998 Act) order would produce an adequate remedy (§13). If conduct fell within the scope of both measures, a local authority could apply for whichever response it considered the more convenient or appropriate (§13). There was "no 'closest fit' principle which cuts down the statutory powers" (§§28, 32). So too here, submits Ms Bhogal KC (see §31 below). In the same way, the existence and availability of PSPOs must not distort the nature meaning of the provisions governing the scope of Closure Orders. These are overlapping powers.

THE PREMISES ISSUE

24. I have described (§§16-19 above) the three exclusion zone "premises" in respect of which the Closure Notices were issued, the Closure Orders were made, and the Extended Closure Orders were sought. The Court's Reason [1] was that the applications for the Extension did not "meet the definition of particular premises, as set out in the 2014 Act". As encapsulated in Question (a), the Court's approach involved:

> ***… construing the definition of "premises" to relate only to "particular premises" which could not, as a matter of law, include open spaces to which the general public had access, namely a street or several streets as defined by maps attached to the Orders.***

The Stated Case explains (at §§7b-c, 8) that the Court's reasoning was as follows:

> ***(7b) The purpose of the legislation contained in [Part 4] Chapter 3 of the 2014 Act is to close premises quickly to prevent or deal with public nuisance or disorder. The 'streets' named in these applications do not meet the definition of 'premises'. The term "particular premises" in the 2014 Act is conclusive. 'Premises' must be 'particular premises' as referred to in sections 76 and 81 of the 2014 Act, for example a structure and its adjacent land or outbuildings. The 2014 Act clearly targets pieces of property such as a particular house, shop or field, all of which have access points to which any notice/ order could be affixed. It does not cover large geographical areas. The reference in s.92 of the 2014 Act, to land, is to ensure that anti-social behaviour in gardens or a particular field is covered by the legislation. (7c) The type of behaviour the Council are seeking to prohibit and regulate, in wide sections of the City, is provided for by way of Public Spaces Protection orders, under [Part 4] Chapter 2 of the same Act. (8) Consequently, we found that Closure Orders under the 2014 Act could not be made for large geographical areas as they did not satisfy the definition of premises…***

Argument

25. The Council's argument on the Premises Issue, as advanced before the Court at the hearing on 26.4.22, is summarised in the Stated Case (at §§4b and 6) as follows:

> ***(4b) It is clear and unambiguous that land can be defined as premises. The 2014 Act defines premises in section 92 "premises includes any land or other place (whether enclosed or not)". The definition is not restricted to "particular premises", and it is lawful to make these orders that cover a large geographical area. The statutory definition is capable of including any space as sought in an application and defined in an order, and therefore an order can be made to prevent ongoing anti-social behaviour in these areas… (6) We were referred, by the applicant, to judicial consideration of what the word "premises" means in a legal context ... In Spring House (Freehold) Ltd -v- Mount Cook Land Ltd [2001] EWCA Civ 1833 (§28) it was held "In our judgment it is clear that 'premises' is a chameleon-like word which takes its meaning from its context. Since it can mean almost anything the task of the court is to give the word the meaning which is most naturally bears in its context..." (Ward and Rix LJJ). In the respect of the Anti-Social Behaviour, Crime and Policing Act 2014 that context is supplied by section 92, the interpretation section, which provides 'premises" includes - (a) any land or other place (whether enclosed or not); (b) any outbuildings that are, or are used as, part of premises.***

The Council's skeleton argument before the Court said this (at §§7-8):

> ***(7) It is submitted that: (i) That definition is clear and unambiguous and provides the "context" for its interpretation – there is no need to go beyond the clear wording of the statute to understand the meaning. (ii) Makes clear that premises can include areas of land open to the air, and/or structures. (iii) Makes clear that the land does not need to be "enclosed" in any way. (iv) Makes no distinction about ownership of the land and can therefore apply to land with multiple owners or interested parties. (v) Is not restricted to a single parcel of land, but the land has to be defined in the Order made. (vi) Section 76(8) of the 2014 Act gives the Secretary of State the power to make regulations specifying premises or descriptions of premises to which Closure Notices may not apply; no such regulations have been made and therefore the power is unrestricted. (8) It is therefore submitted that a magistrates' court has the jurisdiction to grant a closure order over a wide open space, even if unenclosed and open to the air and otherwise accessible to the general public, so long as the area is sufficiently clearly described in the order.***

26. Ms Bhogal KC maintains that argument on this issue in this appeal. The essence, as I saw it, of her argument on the Premises Issue was as follows. First, the word "premises" has a context-specific meaning. The meaning of "premises" must be the most natural meaning in the context of the 2014 Act, and specifically in the context of

Part 4 Chapter 3 of the 2014 Act. No material assistance can be derived from meanings which "premises" has or may have in other statutory contexts. This is for the reason explained in Spring House and recorded in the Stated Case at §6 (§25 above). The golden rule is to identify the ordinary and natural meaning of "premises" in the particular statutory context. No assistance is derived from seeing what meaning "premises" may have in other contexts, or from cases addressing that question.

27. Secondly, there is no great significance in Parliament's use of the word "particular" in the phrase "particular premises". The Court emphasised that phrase repeatedly: see Reason [1]; Question (a); and Stated Case §7b (where it is described as "conclusive"). It was wrong to do so. It is true that Part 4 Chapter 3 uses the phrase "particular premises" in two places. One is s.76(1)(a), which sets out the test for issuing a Closure Notice. The other is s.81(2)(a), which sets out the circumstances in which a Closure Notice may be ordered by the magistrates to continue for up to a further 48 hours. In each case, Parliament has framed the test as including being "satisfied … that the use of particular premises has resulted, or (if the notice is not issued [or continued]) is likely soon to result, in nuisance to members of the public". However, "particular" premises is simply being used to mean the premises "in question". It ensures that the premises "in question" must be the source of the problems. This is about there being an existing causal connection. The word "particular" does not inform the meaning of "the premises" and the Court was wrong to think that it did.

28. Thirdly, and crucially, Limb (b) of the statutory definition of "premises" in s.92(1) (§11 above) is universal and all-embracing. It supplies the answer. It gives the contextual meaning of "premises". It contains an express definition of "premises". The definition is deliberately wide. Parliament has made clear in Limb (a) that "any land" will fall within the meaning of "premises". Parliament has also made clear in Limb (a) that "any … place" will fall within the meaning of "premises". The word "any" is unmistakeable and deliberate. It applies to "land" and "other place". The word "place" itself includes "land", which is why Parliament has included any "other" place. The phrase "any other place" includes anywhere which is not "land". An example would be a watercourse, such as a reservoir. Limb (a) plainly includes open land. The "land" or "other place" may be "enclosed or not". That means an open space – land or a place which is not "enclosed" – is included within "premises". That includes the types of land identified in the White Paper (p.67) as "requiring special consideration" in the context of PSPOs: "registered common land", a "registered town or village green" or "open access land". Limb (a) is therefore a universal and all-embracing definition. It will cover anywhere on a map or plan where a line could be drawn and the area within that line could be shaded in yellow. No "land" is excluded. No "place" is excluded. There is no limitation of type, or of size, or of distinctiveness. A line can be drawn on a map or plan, and it need not match any existing distinct feature on the ground, or on the map or plan. None of this is undermined by the fact that Parliament included Limb (b); nor that Parliament used the word "includes". Limb (a) remains universal and all-embracing. Limb (b) and the word "includes" were used by Parliament 'for the avoidance of doubt'. If anything, they serve to emphasise the all-embracing scope of "premises".

29. Fourthly, there is no basis for any other restriction. (1) There is no reason to interpret Limb (a) as meaning "adjacent" land or place. The Court (Stated Case §7b) referred to the "example" of "a structure and its adjacent land or outbuildings". In the first place,

"premises" is nowhere defined as meaning a "building or structure". In the second place, "any land" and "any … place" in Limb (a) of the definition of "premises" does not say "any adjacent land" or "any … adjacent place". It would have been very easy for Parliament to include the word "adjacent" in Limb (a). Especially because Limb (b) was, by contrast, deliberately describing "outbuildings" which are associated with other "premises". To take an example, a privately-owned open-air car-park – without any building or structure and not "adjacent" to any building and structure – would itself be "premises" under the section 92(1) definition. (2) The word "premises" is not, as the Court reasoned, limited to a "place" which has "access points to which any notice/ order could be affixed" (see Stated Case §7b). This follows from the fact that the "land" or "other place" need not be "enclosed" (see Limb (a)). It may be open land or an open place. Parliament has deliberately referred to "any" land or "other place" and has not restricted the definition to land or places attached to buildings or locations where there are defined points of entry or egress to enable the notices to be displayed. True it is that Parliament imposed notice-fixing requirements in s.79(2)(a)-(c). But Parliament was careful to say in s.79(2) that these steps were to be taken "if possible", recognising that it may not be "possible". And Parliament also allowed for other options: including (section 79(2)(d)) giving notice to any person who "appears" to have "control or responsibility for the premises". (3) Nor is there any basis to exclude a highway from "premises". Limb (a) – being universal and all-embracing – includes a "highway". A highway is "land", as well as being a "place". A highway falls within "any" land and "any" place. It follows that a highway can, in principle, be the subject of a Closure Order. This analysis is supported by the fact that Parliament did not make any express provision for a modified approach or process where Closure Orders restrict the public right of way over a highway. By contrast, Parliament did precisely these things in s.64 of the 2014 Act in relation to PSPOs. (4) Nor is there any basis to restrict "premises" to a "building or structure". The word "premises" is not limited to "building or structure". True, Parliament used the phrase "building or structure", recognising that "premises" could "form part" of a "building or structure": see ss.80(8)(b) and 87(1)(b). These are provisions concerned with persons securing access to other parts of the "building or structure". They apply if the "premises" are "part of a building or structure". That is why s.87(1) uses the word "where", to mean 'in the situation where'. These provisions do not say that "premises" means a "building or structure" or "part of a building or structure". It is true that the use of the word "premises", on its own, might have suggested a "building or structure". But the section 92(1) definition puts the position beyond any possible doubt. It does not say or refer to "building" or "structure". It would have been easy to say this. And this is what Parliament would have said, had Parliament intended this restricted meaning of "premises".

30. Fifthly, a narrowed interpretation – and the narrow interpretation of "premises" adopted by the Court – would undermine the purpose of the statutory scheme. That is because serious anti-social behaviour could not be met with this species of statutory intervention. Closure Orders are an agile, flexible and immediate power. They are designed to protect against anti-social behaviour quickly. This is reflected by the near-immediacy of a Closure Notice, with its coverage for the first 48 hours, followed by the mandatory urgent consideration before the magistrates' court. The Closure Order is a form of control which can be carefully tailored and targeted (as will be seen in the context of the Prohibition Issue). There is the important New Flexibility (§13 above). This is not an 'all-or-nothing closure' of the "land" or "place". The 2014 Act has,

purposefully, provided safeguards. The Closure Order needs to be preceded by a Closure Notice with the required notification and consultation (s.76(6)(7)). Closure Notices have a maximum of 48 hours, Closure Orders a maximum of 3 months, and Extended Closure Orders an overall maximum of 6 months. The Closure Order must be justified as necessary on the grounds in the 2014 Act. The necessity test may be harder to satisfy for a larger, more open or less distinct piece of "land" or "place". The "premises" will be "situated" so as to be "within" the "area" of a relevant "local authority" (s.92(2)). The Closure Order will need to meet legal standards of certainty and clarity.

31. Sixthly, the applicability of PSPOs is legally irrelevant. Insofar as Reason [4] and Stated Case §7c indicate that the Court relied – in its interpretation of "premises" – on the provision made for PSPOs, it was wrong to do so, as has been explained (§23 above). A PSPO will apply to a "public place" (s.59(4)), which "means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission" (s.74(1)). There is a clear overlap, because Limb (a) of the definition of "premises" for Closure Orders (section 92(1)) includes "any … place" and a "public place" is a "place", as Parliament has made clear. Closure Orders were one of the suite of responses being introduced and made available so as to be able to deal with anti-social behaviour, including in "public places". PSPOs are available only to the local authority; not the police. PSPOs involve a statutorily-prescribed "necessary consultation" (including of owners and occupiers of land within the restricted area), and "necessary publicity", before making a PSPO (see s.72(3)(a) and (4)). Special "expedited" PSPOs are available only in cases of public spaces involving protests or demonstrations in the vicinity of a school or vaccination or test and trace site (s.59A(2)(3)). PSPO consultation has been understood, for good reason, to be a careful and lengthy process. The March 2023 Revised Guidance now describes (at pp.65-66) "two weeks" or "shorter" if the "matter is particularly urgent", but that is new and ambitious. There is no "closest fit" principle by which the existence of PSPOs "cuts down" the statutory power to adopt Closure Orders whose "statutory conditions are satisfied": see James (§23 above).

Analysis

32. I am not able to accept the submissions advanced on behalf of the Council as to the legally correct meaning of "premises" within Part 4 Chapter 3 of the 2014 Act. I do not accept that the use of the words "any land" and any… place" in s.92(1) Limb (a) has the universal and all-embracing meaning attributed to them. I do not accept that the police, local authority or magistrates are being empowered by Part 4 Chapter 3 to draw any line around any chosen area or locality on a map or plan and identify it, by reference to it being "land" or a "place", as "premises" for the purposes of the statutory powers. Nor do I accept that the police, local authority or magistrates are being empowered to identify or include a highway or highways as "premises" for the purposes of the statutory powers. In my judgment, "premises" for the purposes of Part 4 Chapter 3 calls for decision-makers to focus on whether there is somewhere objectively identifiable as being a distinctive property or distinctive part of a property. That means a property objectively identifiable, in the 'real world', 'on the ground'. I accept that the police, local authority or magistrates can take something which is a distinct part of an objectively identifiable property. So, it could be a floor within a block of flats or even a room in a bed and breakfast. I also accept that police, local

authority or magistrates can take a building or structure. So, it could be the entire block of flats or a shopping centre. I also accept that premises can be identified so as to encompass adjoining or linked land or an adjoining or linked building or structure. Or premises can be identified which is land or a place which is open, or which is enclosed. But what, in my judgment, is always necessary is to identify somewhere, objectively identifiable 'on the ground' and 'in the real world', as a property. Beyond that, whether the facts and circumstances fit with the statutory language is a question of reasonable application for the primary decision-makers (§6 above). Above all, "premises" are not an "area"; they are not a "locality"; they are not 'any line drawn on a map or plan'. Nor, in any event, do they include a "highway". I will identify the reasons which have led me to these conclusions.

33. But first, I will identify a potential argument about the word "includes" in s.92(1). This is an argument which could be raised on behalf of the Persons Unknown, had they a voice in these proceedings, but which I would reject. The argument runs as follows. Limb (a), on its correct interpretation, is doing no more than spelling out that the "premises" – to which a Closure Notice or Closure Order can apply – can include "land" or a "place" which goes with the "building or other structure" necessarily already identified. The word "includes" in s.92(1) is not being used as a non-exhaustive definition of "premises". It is being used as a permissible inclusion with "premises". The word "includes" in s.92(1) means "can carry with them". This interpretative provision is really saying that in a Closure Order "'premises' can carry with them (a) any land or other place (whether enclosed or not); and (b) any outbuildings that are, or are used as, part of premises". Parliament was not saying that "land" could be "premises". Rather, it was saying that "premises" with which land is associated can be grouped together with that land, as "the premises" identified in a Closure Notice or Closure Order. To see what "premises" means, Parliament has clearly spoken about a "building or other structure" or "part of [a] building or other structure" (s.80(8)(a)). That is why s.79(3) says "the building or other structure in which the premises are situated" and s.80(8)(b) says "the building or structure of which the premises form part". Note the word "the"; not "any". It follows that Ms Bhogal KC's paradigm example of the open-air car-park cannot be "premises". This approach to "premises" in s.92 is supported by the following. Section 92 is headed "interpretation". Every other interpretative provision within s.92(1) is a definition: the language chosen is "means" or "has the meaning". The "interpretation" of "premises" is structured differently. Parliament did not say "means" or "has the meaning". Parliament said "includes". What the word "includes" means is that something else can permissibly be included with the "premises" so as to 'go together with' them. In that way, Limb (a) and Limb (b) are of the same 'genus'. Limb (a) is about land or a place which 'goes with the premises'. Limb (b) is about a building (outbuilding) which 'goes with the premises'. The "premises" are not "land" or a "place". They are a building or structure or part of it. That is why the interpretation provision is needed. It means it is not necessary to stop at the building or structure; the yard or garden or outbuilding can be 'included' too.

34. I do not think this line of argument is correct. In my judgment, s.92(1) is an express, but inclusive, definition of "premises". The word "includes" is used because this is a non-exhaustive definition. Limb (a) is not limited to "land" or a "place" which is adjacent to and associated with "premises". Limb (a) does not say "adjacent land" or "an adjacent place". It does not say "land" or a "place" which "is, or is used as, part of

premises". Had Parliament wanted to insist on an associational link, it would have said so. After all, it did so in Limb (b), in referring to "outbuildings that are, or are used as, part of premises". I note that Parliament also did so in Part 4 Chapter 2 (PSPOs), when using the word "place" in speaking of "a place within the curtilage of premises" (s.62(1)(c)). I also note that the definition of "housing accommodation" for the purposes of Part 1 (civil injunctions to prevent anti-social behaviour) is expressly associational: s.20(1) speaks of "any yard, garden, outhouses and appurtenances belonging to the accommodation or usually enjoyed with it", as well as "any common areas used in connection with the accommodation". Parliament did not adopt an associational approach in Limb (a). Nor did it do so for "premises" in Part 4 Chapter 1 (community protection notices) when it said that "'premises' includes any land" (s.57). That was in the context of provision about conduct on or affecting premises, the condition of premises and the use to which premises have been put (see ss.44 and 45). Nor is it right that "premises" in Part 4 Chapter 3 must involve a "building or other structure". The open private car-park is a good example of "premises". It can be "land" or a "place" which is not "enclosed". This is notwithstanding ss.79(3) and 80(8)(b) which speak of "the building or other structure in which the premises are situated". There may be a building or structure; but there may not be. That is why s.87(1) speaks of a situation "where" – ie. if – premises "are part of a building or structure". For these reasons, I reject this first line of argument as being a reason for dismissing the appeal and resolving the Premises Issue against the Council.

35. I think the correct analysis does – as Ms Bhogal KC submits – start with the interpretation provision in s.92(1) of the 2014 Act, where express provision is made as to the word "premises" in Part 4 Chapter 3. I also accept that this is a definitional provision. I accept that Limb (a) is saying that "any land" or "any other place" can itself constitute the "premises". Further, I accept that Parliament conferred power "by regulations to specify premises or descriptions of premises in relation to which a Closure Notice may not be issued" (s.76(8)), which could have narrowed down the scope of "premises" to which the Part 4 Chapter 3 powers could apply, and which has not happened.

36. But what I cannot accept is that Limb (a) has a universal and all-embracing meaning, so as to include as "premises" any 'line drawn on a map or plan', around any chosen 'area' or 'locality'. If Limb (a) were universal and all-embracing, then the definitional provision in s.92(1) itself immediately presents a conundrum. That is for two reasons. In the first place, why would it be necessary or appropriate for Parliament to use the word "includes"? The word "includes" is because other things can also be, or be within, "premises". The word "includes" in a definition straightforwardly connotes a meaning which is non-exhaustive. In the second place, why would Parliament have included Limb (b) at all? If Limb (a) were – in and of itself – universal and all-embracing, Limb (a) would have been the single and sole content of the definition, with nothing left to say. I cannot accept Ms Bhogal KC's 'for the avoidance of doubt' explanation of Limb (b). There would be no 'doubt' for which Limb (b) would be for the 'avoidance'. The function which Limb (b) is fulfilling is to ensure that any property constituting the premises carries with it any outbuildings that are part of the premises or are used as part of the premises. The function which Limb (a) is fulfilling is to ensure that any property, constituting the premises, may be – or carry with it – land or a place. Limb (a) does not say "adjacent" land or an "adjacent" place. It does not say "land which is or is used as part of premises" or a "place which is always used

as part of premises". However, there is good reason for that. Limb (a) embraces adjacent land or an adjacent place, or land or a place which is or is used as part of premises. But Limb (a) also embraces freestanding land, or a freestanding place. Ms Bhogal KC's privately-owned open-air car park is, I agree, a paradigm example of "premises" which are open "land". However, none of this – in my judgment – means "premises" has become 'anything drawn on a map', as describing an 'area', or a 'locality'.

37. The conundrum is resolved, as soon as "premises" is understood as a distinctive property or distinctive part of property. This can be a building or other structure; or part of a building or structure. It can be, or can carry with it, "land" or a "place" (Limb (a)). It can carry with it any relevant "outbuildings" (Limb (b)). This analysis explains the word "includes". This analysis explains the utility of Limb (b), alongside Limb (a). Everything falls into place.

38. There are other virtues of treating "premises" as needing something objectively identifiable as a property – or identifiable part of a property – in the 'real world' and 'on the ground'. One virtue is that this – in my judgment – reflects the ordinary and natural meaning of the word "premises" in this particular statutory context. It "includes" land or a place. It need not be a "building or structure" or "part of a building or other structure". But it must be objectively identifiable as a property or a distinct part of a property. As a matter of ordinary language that is what is understood by "premises". Especially in this statutory context. Another virtue is that the approach fits with the statutory purpose and function of Part 4 Chapter 3 Closure Notice and Closure Order powers. This part of the 2014 Act is empowering the compulsory closure of premises, by way of action by police or by a local authority. The basic consequence of the compulsory closure of premises – reflected in the statutory scheme – is that the mere act of entering, or being present on, compulsorily-closed premises can constitute a criminal offence. This function and these consequences, in my judgment, bring with them a sense of 'real-world' practicality, 'on the ground'. They call for the "premises" to be distinctive and objectively identifiable 'on the ground'. There needs to be a distinct property or distinct part of a property which, by its nature, can sensibly be thought of as being compulsory-closable. It needs to be capable of being sensibly thought of as having been compulsorily closed. It needs to be capable of being identified to those who might enter or by present, as having been compulsorily closed. This fits with the four powers which were consolidated into the new power. And the New Flexibility (§13 above) – to which I will return under the Prohibition Issue – is not a 'game-changer'. The idea of "premises" was the same from 2014 as it was before the 2014 Act. The same interpretative provision was found in the Anti-Social Behaviour Act 2003 ss.11(3), 11L(13); and is still found in the Sexual Offences Act 2003 s.136R(12). There is a principled continuity, so far as "premises" is concerned.

39. In this way, the word "premises" in part 4 Chapter 3 of the 2014 Act fits against other concepts which Parliament used in relation to other powers, now found as simplified powers within other parts of the 2014 Act. That is another virtue. It involves reading and interpreting statutory provisions alongside what were previously provisions within the same area of regulated concern, and which since 2014 have been within the same enactment. Part 3 of the 2014 Act (dispersal powers) involves action being taken in relation to an "area" or "locality": see s.35. Part 4 Chapter 1 (community protection

notices) involves action being taken in relation to conduct in a "locality": see s.43. Part 4 Chapter 2 (PSPOs and expedited PSPOs) involves action taken in relation to a "public place" (see s.74(1)) which becomes designated as a "restricted area" (see ss.59, 59A). These are all regulated responses to anti-social behaviour where what can be identified is an area or locality. That can be a line drawn on a map. And Parliament has made that clear. There is another clue about "locality". Parliament has made provision about occupiers of relevant "premises" within a "locality": see ss.44, 47 and 57 (for "premises" in the context of Part 4 Chapter 1 community protection notices) and see s.62 (for "premises" in the context of Part 4 Chapter 2 PSPOs). What is striking is that when Parliament in the 2014 Act wishes to regulate anti-social behaviour in an "area" or "locality", it does not use the concept of "premises" as being the controlling concept to connote the "area" or "locality". Part of this analysis involves considering PSPOs. In my judgment, the Court's observations about PSPOs (Reason [4]; Stated Case §(7c)) were legally legitimate as part of an exercise in interpretation of "premises" in Part 4 Chapter 3.

40. This approach to "premises" fits with the clues within the rest of Part 4 Chapter 3 itself. One clue is that the word "premises" is accompanied by the word "particular" in s.76(1)(a). The Court placed considerable weight on the word "particular" (see Reason [1]; Question (a); and Stated Case §(7b)). I agree with the Court that the word "particular" is illuminating. Section 76(1)(a) is the very first provision contained within Part 4 Chapter 3. It is also a 'gateway' provision since it governs the question of whether a Closure Notice can lawfully be issued. Closure Orders (s.80), and extended Closure Orders (s.82), are measures which necessarily (s.80(1)(3)) flow from the Closure Notice. The word "particular" did not appear in the Anti-Social Behaviour Act 2003 ss.1(1) or 11A(1); nor does it appear in the Sexual Offences Act 2003 s.136B. I would agree that Part 4 Chapter 3 is not some new departure from the scope and reach of those other schemes, so far as the meaning of "premises" is concerned. But I think the fact that Parliament would naturally use the word "particular" before "premises" is an indicator. And I do not agree that what "particular" is reflecting is the premises 'in question'. In my judgment, it is reflecting the 'distinctive' nature of premises. So that is one clue. I have noted the provisions which say that a Closure Notice can be varied so as not to apply to "a particular part of the premises" (s.78(1)(b) and (3)) and that a Closure Order "may be made in respect of the whole or any part of the premises…" (s.80(8)(a)). I note that the original Closure Notice applies only to "the particular premises" (s.76(1)(a)). I think Parliament contemplated that a distinctive part of a property could constitute the "premises" in the original Closure Notice, and that "part" of what was identified in the Closure Notice could then be used for a varied Closure Notice or a Closure Order. Be that is may, none of it supports an expansive meaning, allowing any area or locality or any line drawn on a map or plan. Another clue can be found in the repeated references to the "use of" or "behaviour on" premises, alongside repeated references to disorder "near" premises: see ss.76(1), 80(5), 81(2), 82(3), 83(7). I think these support the view that "premises" – in terms of the behaviour and the Closure Notice or Closure Order – are distinctive and not simply anywhere where a line could be drawn on a map or plan.

41. In my judgment, there is a further and specific problem as to "premises" being or including highways. Once it is recognised that "premises" connotes an objectively identifiable property, or part of a property, this problem disappears. A highway is not

in my judgment an objectively identifiable property, or an identifiable part of a property, in any ordinary or natural sense. It is not, in my judgment within the reach or purpose of Closure Orders that they can target a highway (as with Lowfields Road: §18 above) or can identify an area include highways (as with Knowsthorpe Gate and The Springs: §§17, 19 above). If Parliament had been contemplating that a Closure Order might apply to, or include, a public highway it becomes very striking that Parliament made no provision relating to the implications of that. Part 4 Chapter 2 (PSPOs), by clear contrast, contains these very detailed and specific provisions:

> ***64 Orders restricting public right of way over highway. (1) A local authority may not make a public spaces protection order or expedited order that restricts the public right of way over a highway without considering – (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway; (b) the likely effect of making the order on other persons in the locality; (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route. (1A) Before making a public spaces protection order that restricts the public right of way over a highway, a local authority must take the prior consultation steps (see subsection (2)). (1B) A local authority may not make an expedited order that restricts the public right of way over a highway unless it – (a) takes the prior consultation steps before making the order, or (b) takes the subsequent consultation steps (see subsection (2A)) as soon as reasonably practicable after making the order. (2) To take the "prior consultation steps" in relation to an order means to – (a) notify potentially affected persons of the proposed order, (b) inform those persons how they can see a copy of the proposed order, (c) notify those persons of the period within which they may make representations about the proposed order, and (d) consider any representations made. In this subsection "potentially affected persons" means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order. (2A) To take the "subsequent consultation steps" in relation to an expedited order means to – (a) notify potentially affected persons of the order, (b) invite those persons to make representations within a specified period about the terms and effects of the order, (c) inform those persons how they can see a copy of the order, and (d) consider any representations made. The definition of "potentially affected persons" in subsection (2) applies to this subsection as if the reference there to "the proposed order" were to "the order". (3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so. (3B) Where a local authority proposes to make an expedited order restricting the public right of way over a highway that is also within the area of another local authority it must, if it thinks appropriate to do so, consult that other authority before, or as soon as reasonably practicable after, making the order. (4) A public spaces protection order or expedited order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway. (5) A public spaces protection order or expedited order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling. (6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order or expedited order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes. (7) A public spaces protection order or expedited order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction. (8) A local authority may install, operate and maintain barriers authorised under subsection (7). (9) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)). (10) In this section – "dwelling" means a building or part of a building occupied, or intended to be occupied, as a separate dwelling; "highway" has the meaning given by section 328 of the Highways Act 1980.***
>
> ***65 Categories of highway over which public right of way may not be restricted. (1) A public spaces protection order or an expedited order may not restrict the public right of way over a***

> ***highway that is – (a) a special road; (b) a trunk road; (c) a classified or principal road; (d) a strategic road; (e) a highway in England of a description prescribed by regulations made by the Secretary of State; (f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers. (2) In this section – "classified road" , "special road" and "trunk road" have the meaning given by section 329(1) of the Highways Act 1980; "highway" has the meaning given by section 328 of that Act; "principal road" has the meaning given by section 12 of that Act (and see section 13 of that Act); "strategic road" has the meaning given by section 60(4) of the Traffic Management Act 2004.***

It is conspicuous that there is no similar provision in Part 4 Chapter 3 (Closure Orders). There is no mention of highway in Part 4 Chapter 3. The reason, in my judgment, is straightforward. A highway will not fall within the meaning of premises – even including "land" or a "place" – in the sense of an objectively identifiable property or objectively distinct part of a property.

42. I cannot accept that this approach undermines or defeats the statutory purpose of Closure Orders. Closure Orders pursuant to Part 4 Chapter 3 of the 2014 Act are one of a suite of – frequently overlapping – powers conferred by Parliament (§7 above). This is a series of bespoke powers, accompanied by relevant and appropriate safeguards. In relation to "premises" which are or are part of an objectively identifiable property there are the Part 4 Chapter 3 powers with their safeguards. For an "area" or "locality" there are the powers – and safeguards – found elsewhere within the legislation. This is not to adopt a 'closest fit' approach, where one overlapping power would impermissibly cut down on the scope of another (§23 above). Rather, it is a 'correct fit' approach, where an overlapping power is given its ordinary and nature meaning, in its contextual setting, including in reading the legislation as a whole.

43. At this point I will address an argument made by Ms Bhogal KC about Closure Orders compared with PSPOs. Ms Bhogal KC does not maintain the point that was made to the Court about financial penalties, but she does maintain the point about consultation and delay (§23 above). She submits as follows. There is a contrast between the "necessary consultation" and "necessary publicity" required for PSPOs by s.72(3)-(6) and the less arduous consultation requirements required for Closure Notices by s.76(6)-(7). Until the most recent Statutory Guidance there was no indication that a PSPO could be used with any urgency. The expedited PSPO is a very narrow category (s.59A) for public places near schools or vaccination sites. A PSPO is not an order taking immediate effect, whereas a Closure Notice can be issued at speed. I have not found these points persuasive on the Premises Issue (or the Prohibition Issue). The fact is that Parliament has conferred powers to prohibit specified things being done within a restricted area, based on consultation steps which Parliament required as necessary. Within the consultation duties and associated regulations there are duties, but also judgment calls, about the nature and degree of consultation. Nothing in the old Statutory Guidance said or suggested that PSPOs could not be deployed with urgency. The current Statutory Guidance reflects the fact that they can, making clear the appropriate length of consultation will depend on the particular circumstances and that if the matter is particularly urgent a consultation period shorter than two weeks is likely to be proportionate (pp.65-66).

44. Returning to "premises", I do not think there is ambiguity or obscurity. I think the discernible 'mischief' at which Closure Orders are directed involves premises which constitute an objectively identifiable property or objectively distinct part of a

property. But there is a degree of reassurance in the Explanatory Notes to the 2014 Act. This is the given example of a Part 4 Chapter 3 Closure Order (at §188):

> ***For example, closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period.***

By contrast, these are the description and examples of Part 4 Chapter 2 PSPOs (Explanatory Notes at §173):

> ***The [PSPO] is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's qualify of life, by imposing conditions on the use of that area… Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children's play areas. It could also prohibit spitting in certain areas (if the problem was persistent and unreasonable)…***

The Statutory Guidance is a useful cross-check. It describes PSPOs as orders which "can restrict access to public spaces (including certain types of highway)" (p.62), being "intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone" (p.64), needing "special consideration" in the case of registered common land, a registered town or village green or open access land (p.67). In relation to Closure Notices and Closure Orders, what is said is (p.79)

> ***Both the [Closure] Notice and the [Closure] Order can cover any land or any other place, whether enclosed or not including residential, business, non-business and licensed premises.***

So, even in the context of "any land" or "any other place", the examples given are residential premises, business premises, non-business premises and licensed premises. All of those would constitute an objectively identifiable property.

45. The history is reassuring too. There was Home Office Guidance in relation to the Anti-Social Behaviour Act 2003 (see Leary at §17). Ms Bhogal KC helpfully found and supplied the 2008 Home Office Guidance on the new Part 1A of that Act, inserted by the Criminal Justice and Immigration Act 2008. It contained this, in a section entitled "the definition of premises" (§3.3):

> ***3.3.1 The Act defines 'premises' as including: (a) any land or other place (whether enclosed or not); and (b) any outbuildings that are used as part of the premises. Any of the following are therefore included: • Houses • Flats • Apartments • Sheds • Common areas adjacent to houses/flats • Garages • Factories • Shops • Pubs • Clubs • Public buildings • Community centres or halls • Car parks. 3.3.2 In practice, any type of structure or place where disorder or serious nuisance is occurring is covered. This includes licensed premises and, while such persistent disorder or nuisance associated with pubs and clubs is more suited to being tackled under the licensing system, they should not be excluded from these provisions where the anti-social behaviour meets the criteria for a Closure Notice to be considered. Upon commencement of the provisions, no types of property will be exempted from closure. 3.3.3 The power can be used in definable areas of a path, field or other land. However, the difficulty in securing premises or areas mean that the power is unlikely to be appropriate in such locations. Partners should have a strategy in place to deal with a situation where anti-social behaviour moves from one premises to another. It may even mean that other remedies should be considered. 3.3.4 The premises can also be a sub-section of a larger building, such as a flat within a block or a room within a hostel or bed and breakfast. In these cases, the room will be closed but access will be maintained to the rest of the building.***

> ***Thus the power of closure can be used flexibly depending on the needs of the individual case.***

The examples given are all "property". It was said that no types of "property" were being exempted (by s.11A(10) regulations). The examples of "premises" were Houses; Flats; Apartments; Sheds; Common areas adjacent to houses/flats; Garages; Factories; Shops; Pubs; Clubs; Public buildings; Community centres or halls; Car parks; definable areas of a path, field or other land; a sub-section of a larger building including a flat within a block or a room within a hostel or bed and breakfast. These fit with taking all or part of an objectively-identifiable property. The description does not support any line being drawn on a map or plan, to identify an area or locality; nor the identification or inclusion of a highway.

46. There is also this historical reference point regarding "highways" and "premises". It concerns gating orders (§7 above), a pre-2014 Act power governed by Part 8A (ss.129A to 129G) of the Highways Act 1980, inserted by s.2 of the Clean Neighbourhoods and Environment Act 2005. By s.129A, the highway authority was empowered to make a gating order in relation to "any relevant highway", where satisfied that "premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour" and "the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour". What is interesting is that Parliament did not there treat the "highway" itself as simply being "premises", notwithstanding an interpretative provision (s.329) which provided that "'premises' includes land and buildings".

47. Another reassuring cross-check, so far as concerns "premises" in Part 4 Chapter 3, is the White Paper. It spoke of "particular premises" (at §3.36) when it said: "In some communities there are particular premises that are a constant focus for severe [anti-social behaviour], making the lives of those living nearby misery". Then, in describing the "community protection order (closure)" – which became the Part 4 Chapter 3 Closure Order – it said this, making repeated reference to a "property".

> ***3.37 The new, simpler, closure powers would allow the police or local authority to protect victims quickly by issuing an order to temporarily close any property, including licensed premises, businesses and private residences for up to 48 hours if there is a public nuisance or if there is or is likely imminently to be disorder and if the closure is necessary… 3.38 The notice could be used in a range of situations related to both licensed and other premises, including: • Closing a nightclub, where the police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific Friday night; and • Closing a property where loud music is being played at unsociable hours in a residential area, where negotiation had failed to resolve the issue. 3.39 The test for continuing the closure of the property for longer than 48 hours would be higher than the initial test … A property subject to such an order could be completely closed for up to three months initially, and up to a maximum of six months in total… 3.40 Examples of where a longer closure order might be sought are: • A premises used for drug dealing, associated with serious anti-social behaviour in the immediate vicinity; • A premises where the persistent behaviour of the residents (eg. visitors coming and going at all hours, frequent loud parties, harassment and intimidation of neighbours) is associated with serious anti-social behaviour in the immediate vicinity.***

48. So far as authority is concerned, I agree with Ms Bhogal KC that the golden rule (§26 above) is that the Court must find the meaning – the ordinary and natural meaning – in the context of the statutory scheme. This was seen in Spring House (§25 above). There is certainly no 'read-across' from other contexts and the Court must proceed with caution in looking at authorities from other contexts. Having said that, I have

found it reassuring to find that one theme which has assisted in other contexts is about objective-identifiability on the ground. In February 2008 the House of Lords grappled with the meaning of "premises" within s.47(1) of the Leasehold Reform, Housing and Urban Development Act 1993. The case was Majorstake Ltd v Curtis [2008] UKHL 10 [2008] 1 AC 787. The statutory provision spoke of a landlord's intention to "redevelop any premises in which the tenant's flat is contained". The House of Lords embraced a legal meaning of premises which emphasised "a physical space which is objectively recognisable at the time when the tenant served his notice" (§33) and "an objectively recognisable physical space, something which the landlord, the tenant, the visitor, the prospective purchaser would recognise as 'premises'" (§39). That was of course a very different distinct statutory context. The golden rule applies: see Majorstake itself at §§44-45. I am not saying for a moment that "premises" in Part 4 Chapter 3 of the 2014 Act has the same meaning as it had in s.47(1) of the 1993 Act in Majorstake. The point is a more subtle one. It is that an idea of objective identifiability on the ground may be a feature of the legally correct contextual understanding of "premises" in a statutory scheme.

49. For all these reasons, the Court was correct in law in my judgment to identify the "premises" (§§16-19 above) as not being capable of constituting "premises" for the purposes of Part 4 Chapter 3 Closure Orders. My answer is "yes" to Question (a). I reject Ground (1) and, so far as it relates to the Premises Issue, Ground (2).

THE PROHIBITION ISSUE

50. I have described (§20 above) the "Prohibition" in respect of which the Extended Closure Orders were sought. The "premises" are described as "closed to all persons … when participating in car cruising or 'car meet' events on [the premises]".

51. The Court rejected the Prohibition as incompatible with the scope of the statutory powers. Its Reasons [2] and [3] were that "the legislation is designed to prohibit access by all people/ at all times/ in all circumstances except to those specified by the court"; and that "there is a positive expectation that the court will detail the access allowed and not, as in these cases, that which is not allowed". As encapsulated in Question (b), the Court's approach involved "construing s.80(7) of the 2014 Act, to require a positive exception of specified access permitted, detailed in the Order" so that the Order could not "be phrased so as to exclude only those persons (unknown) engaged in a specified activity, such as 'car cruising'". The Stated Case explains (at §§(3a), (7a), (7c) and (8)) that the Court's reasoning was as follows:

> ***(3a) … The legislation provides that a closure order can be made to prohibit access to premises (where there are grounds to make such an order), by all people, at all times and in all circumstances, except those specified by the court… (7a) s.80(7) of the 2014 act, provides that a closure order can be made to prohibit access to premises (where there are grounds to make such an order), by all people, at all times and in all circumstances, "except those specified" by the court. This is a positive expectation that the court will detail the access that is allowed, which certain individual(s)/group(s) you are allowing to enter, as opposed to that which is not allowed… (7c) The type of behaviour the Council are seeking to prohibit and regulate, in wide sections of the City, is provided for by way of Public Spaces Protection orders, under [Part 4] Chapter 2 of the same Act. (8) … [T]he legislation requires the court to specify the access that which is allowed under such an order, not that which is not allowed …***

Argument

52. The Council's argument on the Prohibition Issue, as advanced before the Court at the hearing on 26 April 2022, is summarised in the Stated Case (at §(4a)) as follows:

> ***(4a) An order is capable of complying with section 80(7) of the 2014 Act if it is expressed to prohibit access to premises by persons of a specified description, such as when in possession of certain articles or in specified circumstances (eg begging), or in these circumstances, participating in car cruising events.***

I have already explained the Council's position in relation to PSPOs (§§23, 43 above).

53. Ms Bhogal KC maintains the argument in this appeal. The essence, as I saw it, of her argument on the Prohibition Issue was as follows. Closure Notices and Closure Orders can operate so as to 'prohibit specific things being done' on the premises. That is for the following reasons. First, the Part 4 Chapter 3 powers have the New Flexibility (§13 above) seen in s.76(3) (§8 above) and s.80(7) (§9 above). This allows for Closure Notices and Closure Orders to be tailored by reference to "persons", "times" and "circumstances". Although the word is "closure", these are not 'all or nothing' powers. They can be highly tailored and targeted. Police officers and those authorised to enter and carry out essential maintenance or repairs are already "authorised persons" who can enter (s.85). Other entry can be permitted: (i) by reference to specified persons or specified descriptions of persons; (ii) by reference to specified times; and (iii) by reference to specified circumstances. The idea of specified "circumstances", moreover, materially adds to what is meant by specified "persons" and "times". Suppose for example there is a tenant whose flat is being exploited by drug dealers (cf. Leary: §13 above). There could be a Closure Order, but it could specify the tenant, family members and social workers as being permitted to enter the "closed" flat. Or suppose there is a car-park which is used by drug-dealers at night. There could be a Closure Order, but it could specify that the car-park remains open to anyone between 6am and 10pm. There are many ways in which a Closure Order could be tailored and targeted by reference to persons, times and circumstances. There could be a prescribed category of person to whom the premises are not closed, defined by reference to their actions: eg. any person while conducting a visit as a social worker. A Closure Order in relation to a flat could be targeted and tailored to prohibit actions (drug-dealing) or specified persons (those participating in drug-dealing) on the premises. A Closure Order in relation to a car-park could be targeted and tailored to prohibit actions (participating in 'car racing') or specified persons (those participating in 'car-racing') on the premises. These are prohibitions on access by identifying "circumstances" and/or "specified descriptions" of "persons".

54. Secondly, it is true that ss.76(3) and 80(7) (§§8-9 above) are powers described by Parliament on an 'all-except-this' basis. But it is entirely consistent with that statutory design for the Closure Order to 'prohibit specific things being done' on the premises. After all, that which is 'prohibited' and that which is 'permitted' are two sides of the same coin. An 'all-except-this' prohibition is, in substance, the same as an 'only-this' prohibition. To prohibit entry to premises except in the hours 6am-10pm ('all-except-this') is exactly the same as prohibiting entry only in the hours 10pm-6am ('only-this'). To prohibit entry to all persons except those aged 18 and over ('all-except-this') is exactly the same as prohibiting entry only to those aged 17 and under ('only-this'). To prohibit entry to all persons except family members ('all-except-this') is exactly the same as prohibiting only non-relatives ('only-this'). It follows that whether a Closure Order is expressed as 'all-except-this' or 'only-this' is not a

question of substance, but of drafting. The scope of the statutory power is a question of substance, not drafting. Provided what is being prohibited fits – in substance – with the statutory power, the drafting of the Closure Order can be done in whatever language promotes certainty and clarity. Neither s.76(3) nor s.80(7) requires drafting in any particular way. They speak of what a Closure Notice or Order "may prohibit". Indeed, unlike the parallel provision for PSPOs (s.59(6)) they do not speak of how an Order "may be framed". Accordingly, Closure Notices and Closure Orders can be framed to 'prohibit specific things being done' on the premises. In rejecting that possibility, the Court confused drafting with substance. It spoke of prohibiting people, times and circumstances "except … those specified by the Court" (Reason [2]; Stated Case §§(3a), (7a) and (8)), so that "the court will detail the access allowed" (Reason [3]; Stated Case §(7a)), with "a positive exception … detailed in the Order" (Question (b)). But these are all concerned with the way in which the Order is drafted. And s.76(3) and s.80(7) are concerned with substance, not drafting.

55. Thirdly, this approach reflects and promotes the purpose and policy of the 2014 Act and of Part 4 Chapter 3. The purpose and policy are for anti-social behaviour within premises to be eliminated with flexibility and immediacy, applying a necessity test (ss.76(1), 80(5)). The purpose and policy are promoted if – and undermined unless – Closure Notices and Closure Orders can operate so as to 'prohibit specific things being done' on the premises. So, if the relevant anti-social behaviour on the premises is drug dealing, the Closure Notice or Closure Order can prohibit access to the premises for persons of a specified description (those participating in drug-dealing) or in specified circumstances (when participating in drug-dealing). Or take the example that the Council gave to the Court: "begging" (Stated Case §(4a): §52 above). The Closure Notice or Closure Order can prohibit access to the premises for persons of a specified description (those participating in begging); or it can prohibit access in specified circumstances (when participating in begging). An offence will be committed where a person enters or remains on premises "in contravention of" a Closure Notice or Closure Order (s.86(1)(2)). In the present case, the "contravention" – spelled out in the Closure Orders – was participating in car cruising or car meet events. The Closure Orders provide that all persons are prohibited entry to the premises in the following circumstances: when participating in car cruising or car meet events. That is a tailored and targeted prohibition. It fits with the statutory powers. It ensures the promotion, rather than the frustration, of the statutory purpose and policy. The prohibition was squarely within the statutory powers, albeit overlapping with PSPOs. The Court was wrong to find otherwise.

Analysis

56. I am not able to accept the submissions advanced on behalf of the Council as to the legally correct meaning of the prohibition described in s.80(7). I do not accept that it falls within the scope of the statutory power to make a Closure Order (or issue a Closure Notice) which "prohibits specific things being done" on the premises. I do not accept that this – and the Prohibition in this case – is consistent with the power in s.80(7). I will explain why. In doing so, I will focus on Closure Orders and s.80(7). But the same points can be made in relation to Closure Notices and s.76(3).

57. First, Parliament's expression in s.80(7) of the nature of the prohibition being empowered is careful and specific. A Closure Order can (s.80(7), emphasis added):

> ***prohibit access – (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description; (b) at all times, or at all times except those specified; (c) in all circumstances, or in all circumstances except those specified.***

Parliament did not say that a Closure Order may prohibit access "only to persons in specified categories"; or "only at specified times"; or "only in specified circumstances". Parliament did not say that a Closure Order may be one which "prohibits specified things being done" on premises. It would have been very easy for Parliament to say these things. Instead, Parliament has deliberately said that a Closure Order may "prohibit access … by all persons, or by all persons except those specified, or by all persons except those of a specified description"; that it may "prohibit access … at all times, or at all times except those specified"; and that it may "prohibit access … in all circumstances, or in all circumstances except those specified". It is true that this was itself a New Flexibility (§13 above) introduced in the 2014 Act itself. But it is a specific, limited degree of flexibility. It allows an 'all-except-this' prohibition. It confers what in Leary was identified as absent from the previous legislation, namely a "power to exclude" from the prohibition (§13 above).

58. Secondly, Parliament's expression in s.80(7) involves a clear and unmistakeable contrast with what was said in relation to PSPOs, in s.59(4) and (6) (emphasis added):

> ***(4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) ("the restricted area") and – (a) prohibits specified things being done in the restricted area, (b) requires specified things to be done by persons carrying on specified activities in that area, or (c) does both of those things… (6) A prohibition or requirement may be framed – (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories; (b) so as to apply at all times, or only at specified times, or at all times except those specified; (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.***

The wording which is single-underlined matches what is seen for Closure Orders in s.80(7). But the wording which is double-underlined has deliberately been included in s.59. It is empowering an 'only-this' prohibition. But it is conspicuously absent from s.80. These provisions are about prohibitions, found in a suite of powers for addressing anti-social behaviour. They are in the same Part (Part 4: "community protection") of the same Act (the 2014 Act). They were chosen by Parliament to be included in s.59 and not in s.80, at the very same time that Parliament was introducing the New Flexibility (§13 above) for Closure Orders. Parliament did say (s.59(4)(a)) that a PSPO may be one which "prohibits specified things being done" in the restricted area. Parliament did say (s.59(6)) that a PSPO prohibition may be framed as an 'only-this' prohibition: so as to apply "only to persons in specified categories" (s.59(6)(a)); or "only at specified times" (s.59(6)(b)); or "only in specified circumstances" (s.59(6)(c)). This was in addition to Parliament saying that a PSPO prohibition may be framed as an 'all-except-this' prohibition: so as to apply "to all persons … or to all persons except those in specified categories" (s.59(6)(a); or to apply "at all times … or at all times except those specified" (s.59(6)(b)); or to apply "in all circumstances … or in all circumstances except those specified" (s.59(6)(c)). The difference in wording and structure is unmistakeable. PSPOs allow for a targeting which Closure Orders do not. A PSPO, unmistakeably, can be an order which "prohibits specified things being done". It can apply to target "persons in specified categories", to apply "only at specified times", or to target "only … specified circumstances". Not so, a Closure Order. This part of the analysis of the Prohibition

Issue involves identifying a contrast with PSPOs. In my judgment, the Court's observations about PSPOs (Reason [4]; Stated Case §(7c)) were legally legitimate as part of an exercise in interpretation of the prohibition in Part 4 Chapter 3.

59. Interestingly, the Explanatory Notes give aggressive begging as a paradigm example of anti-social behaviour (§8) and describe PSPOs as intended to deal "with particular nuisance or problem in a particular area… by imposing conditions on the use of that area" (§173). Similarly, the White Paper gives as an illustration a PSPO "to prevent groups from using a public square as a skateboard park" (§3.26), explaining (p.63) that PSPOs can be "targeted against certain behaviours by certain groups at certain times". I have found no indication in any material that Closure Powers have that function.

60. Thirdly, there is an obvious reason why the flexibility of Closure Orders does not extend to the sort of tailoring and targeting seen for PSPOs. The answer is that these are – by their nature and description – orders for compulsory "closure", of premises. It makes sense that they should have a nature which reflects a common sense understanding of "closure" of premises. It makes sense to say that a "closure of premises" can involve "exceptions". The "exceptions" can involve specified "times", specified "persons" or specified "descriptions of persons", or specified "circumstances". Such "exceptions" are consistent with the idea that the "premises" have compulsorily been "closed". The "closure" – having regard to its "exception" or "exceptions" – must meet the test of necessity (s.80(5)). A measure whose necessary essence involves prohibiting access only by a specified person or specified persons or a specified description of person, or (subject to a point to which I will return) only at a specified time or times, or only in specified circumstances presents this problem. It would involve so-called "closure" not being, in nature, closure at all. As has been seen, the powers within Part 4 Chapter 3 are part of a suite of powers to deal with anti-social behaviour. Other powers allow the targeting of persons, and of actions. Parliament could easily have chosen to make orders under Part 4 Chapter 3 capable of being a "prohibition" on an activity. In the Council's examples, that would be begging or drug-dealing. Parliament could have chosen to make orders under Part 4 Chapter 3 capable of "contravention" (s.86(2)) through the activity of begging or drug-dealing. The New Flexibility (§13 above) could have extended this far. It could have extended as far as the nature of PSPOs. But this would have been an odd type of "closure of premises" order. What matters is that this was not the "closure of premises" order for which Parliament was making provision. Parliament would not have designed the prohibition as it did. It would have language equivalent to that which is found for PSPOs in s.59.

61. Fourthly, this means there is a real significance – as a matter of substance – in the fact that s.80(7) is expressed, in all three respects (persons, times and circumstances), as empowering an 'all-except-this' prohibition. I agree with Ms Bhogal KC that it is important to focus on substance. I accept that 'all-except-this' and 'only-this' can be two sides of the same coin. I also accept that it would not be unlawful for a Closure Order prohibition, whose substance matches the power conferred by Parliament, to be 'drafted' differently for clarity and simplicity. I accept, moreover, that a Closure Order may be tailored so that – viewed in the round – the premises are more 'open' than they are 'closed'. These points are well illustrated by considering prohibited access "only at specified times" (s.80(7)(b)). To speak of prohibited access 'at all

times except 6am-10pm' ('all-except-this') is, I accept, exactly the same as to speak of prohibited access only at '10pm-6am' ('only-this'). A Closure Order using the latter formulation would be clear and, in my judgment, lawful. It would also mean premises 'open' 16 hours a day (6am-10pm) and 'closed' only 8 hours a day (10pm-6am). It may be (and this is the point to which I said I would return) that a prohibition on access "at all times except" could always instead be framed as "only at specified times", in which case those two phrases are always identical. But there is, in my judgment, an acid test which unlocks all of this. The acid test is to ask whether the prohibition can be framed as an 'all-except-this' prohibition on access only by having an 'exception' which is itself an 'all-except-this' exception. I will explain:

62. Take the example of a prohibition on entry of premises by Jo Smith. How could this ever be a Closure Order which "prohibit[s] access … by all persons except those specified"? It could only do so if it were framed as follows:

> ***Access is prohibited by all persons except all persons who are not Jo Smith.***

This is a contortion which fails the acid test. The exception is itself an 'all-except-this' exception. The phrase "all persons except all persons who are not" gives the game away. This cannot be an 'all-except-this' prohibition. It is – in truth and in substance and necessarily – an 'only-this' prohibition. Now, take the example of a prohibition on entry of premises by beggars as a "specified description" of "persons". How could that ever be a Closure Order which prohibits access "by all persons except those of a specified description"? It could only do so framed as follows:

> ***Access is prohibited by all persons except all persons who are not beggars.***

This is another contortion which fails the acid test. It is another 'all-except-this' exception. It cannot be an 'all-except-this' prohibition. It is, in truth and in substance and necessarily, an 'only-this' prohibition. Now, take the example of a prohibition on entry of premises by drug-dealers, as "circumstances" which are "specified". How could that ever be a Closure Order which prohibits access "in all circumstances except those specified"? The answer is only if framed as follows:

> ***Access is prohibited in all circumstances except all circumstances which are not engaging in drug-dealing.***

This is a further contortion failing the acid test. The phrase "all circumstances except all circumstances" gives the game away. The exception is an 'all-except-this' exception. It is not, and cannot be, an 'all-except-this' prohibition. It is – in truth and substance and necessarily – an 'only-this' prohibition.

63. Fifthly, the Court was recognising precisely this problem on this aspect of the case. The Court, rightly in my judgment, recognised that it does not fall within the scope of the statutory power to make a Closure Order which "prohibits specific things being done" on the premises. It recognised, rightly in my judgment, that the Prohibition in this case was not consistent with the power carefully conferred by Parliament in s.80(7). It comes to this. How could the Prohibition in this case be a Closure Order which prohibits access "by all persons except those of a specified description"? How could the Prohibition be a Closure Order which prohibits access "in all circumstances except those specified"? I put this to Ms Bhogal KC. Necessarily, in my judgment, she has to seek to fit the Prohibition with the statutory power by impermissible

contortion. She has to characterise these – in substance – as Closure Orders by which (in terms of "circumstances"):

> ***Access is prohibited in all circumstances except all circumstances which are not participating in car cruising or car meet events on the premises.***

Or (in terms of "persons"):

> ***Access is prohibited by all persons except all persons who are not participating in car cruising or car meet events on the premises.***

64. For all these reasons, the Court was correct in law in my judgment to identify the Prohibition (§20 above) as not falling within the powers to make Part 4 Chapter 3 Closure Orders. My answer is "yes" to Question (b). I reject Ground (3) and, so far as it relates to the Prohibition Issue, Ground (2).

CONCLUSION

65. This is a case where the Court spotted two distinct legal problems with the Closure Orders whose extension was being pursued by the Council. One was about whether these were in law "premises". The other was about whether this was in law "closure". The Court saw these as fundamental problems, either of which was fatal to the legality of the Closure Orders. I have concluded that the Court was in substance correct on both issues. My conclusion is that the Court made no material error of law and the Council's appeal must be dismissed. Having circulated this judgment as a confidential draft, there was no consequential matter raised. The appeal is dismissed.