Case No: AC-2024-LON-002192

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**PLANNING COURT**
**[2025] EWHC 343 (Admin)**

The Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 28 January 2025

BEFORE:

**MRS JUSTICE LANG DBE**

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BETWEEN:

**JAMES TURNER**

Applicant

- and -

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES**
**(2) BUCKINGHAMSHIRE COUNCIL**

Respondents

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**MR S WHALE** (by Direct Access) appeared on behalf of the Applicant.

**MR R CLAPP** (instructed by Government Legal Department) appeared on behalf of the First Respondent.

The Second Respondent did not appear and was not represented.

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**JUDGMENT**
(Approved)

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1. MRS JUSTICE LANG: The applicant seeks permission to appeal, under section 289 of the Town and Country Planning Act 1990 ("TCPA 1990"), against the first respondent's decision made on 31 May 2024, by an inspector on his behalf. The inspector dismissed the applicant's appeal under grounds (a) (b) (e) and (g) of section 174(2) TCPA 1990 against an enforcement notice ("EN") issued on 20 September 2021 by the second respondent ("the Council"), and served on the applicant in respect of the land known as Gladwins Wood, Pinstone Way, Tatlin End, Denham, SL9 7BJ.

2. This application was heard on the same occasion as *Paton v Secretary of State for Levelling Up, Housing and Communities* as both appeals raised the same issue on the scope of ground 173(2) TCPA 1990.

3. The grounds of appeal are as follows:

**Ground 1**

4. The inspection erred in law in concluding, in paragraph 29 of his decision, that the occupiers were duly served with the enforcement notice by fixing it to an entrance gate;

**Ground 2**

5. The inspector erred in law in concluding, in paragraph 31 of his decision, that the occupiers were not substantially prejudiced even if the enforcement notice was not duly served on them.

**Ground 3**

6. The inspector erred in law, in concluding, in paragraph 33 of his decision, that the date of issuing the enforcement notice is not the only relevant date for ground (b) purposes.

**Ground 4**

7. The applicant's challenge to the inspector's cost decision stands or falls with grounds 1 and 2.

8. A person with an interest in land to which an enforcement notice relates or a relevant occupier may appeal against that notice on the grounds set out within 174(2) TCPA 1990, which are as follows:

> "An appeal may be brought on any of the following grounds—
>
> (a)that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
>
> (b)that those matters have not occurred;
>
> (c)that those matters (if they occurred) do not constitute a breach of planning control;
>
> (d)that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
>
> (e)that copies of the enforcement notice were not served as required by section 172;
>
> (f)that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
>
> (g)that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed"

9. Inspector Hand summarised the planning history at paragraphs 5 to 8 of his decision:

> "5. The appellant and his brother have been operating a business from Gladwins Wood for many years. The wood itself is protected by a TPO and is a registered ancient woodland and sits along the east side of the M25 between Gerrards Cross and Denham within the green belt.

> 6. There is a considerable history of enforcement action and I shall rehearse the relevant elements here. Originally it was a nursery and in 2000 various enforcement notices were issued concerning the use of a building as a dwelling, its extension and erection of polytunnels. These were appealed and the appeal decision notes that any horticultural activity was low key and upheld all the notices. The dwelling on site today is the same dwelling, and its use for residential purposes is therefore unlawful as the 2000 enforcement notices are still in force.
>
> 7. Between 2000 and 2009 various applications for horticultural uses were refused and in 2009 an LDC for vehicle and container storage was also refused. This led to an enforcement notice being issued in 2013 as the container use had intensified. This was upheld on appeal, but the appeal decision was quashed in the High Court. Before it could be redetermined the appellant came to an agreement with the Council who amended the notice and the appeal was withdrawn. The amended notice allowed the use of two areas of the site close to the current entrance, an area edged in yellow and one in green, for the stationing of containers, motor vehicles, builder's materials and waste. These are very small areas as can be seen from a s106 that was also entered into that described exactly what could be done in these areas. The yellow area could be used for 4 large or 8 small containers or 9 lorries while the green area could be used for 6 large or 12 small containers or 14 lorries.
>
> 8. The current site is huge and contains dozens if not 100s of containers as well as compounds for plant hire, builder's yards and many scaffolding companies. It has expanded massively from the very limited lawful use allowed by the 2013 notice which is still in force. This huge mixed use site was attacked in 2020 by another enforcement notice which was then withdrawn as it had not been served with the correct plan. The follow-up notice was issued in September 2021 and is subject to this appeal. In 2022 an application for an LDC for various buildings (called scaffold towers) was made and an appeal lodged against non-determination, which is also being dealt with today."

**<u>Ground 1</u>**

10. It was common ground that the applicant, as owner of the land, was duly served with the EN. In the appeal on ground (e), the applicant submitted that the EN was not properly served on the occupiers of the land. The applicant's case was that each occupier should have been separately served at his compound, if he had one.

11. The council's case at the Inquiry was that it sent the EN to 29 different companies who they believed occupied the site (paragraph 23 of the decision). Subsequently a

planning contravention notice ("PCN") was issued and a list of 90 companies on the site was provided. The council ascertained that 57 companies were in occupation when the EN was issued but they were not served directly.

12. For those who were not served directly, the council contended that service was governed by section 329(2) TCPA 1990, which provides for service to those who are unknown. A notice is to be taken to be served under section 329(2)(b)(ii) if "it is delivered to some person on those premises or is affixed conspicuously to some object on those premisses". In this case, service was effected by affixing the EN to the entrance gates (it appears that the council meant both of the two entrance gates, though the inspector at one stage referred to the notice being affixed on an entrance gate in the singular: see paragraphs 25 and 29 of the decision).

13. On my reading of the decision, the inspector accepted the council's submission that the occupiers were duly served by fixing the notice to the gate (paragraph 29) and concluded at paragraph 30:

> "The appellant argues that fixing the notice to the gate is not the same as fixing it to the occupiers' premises. I assume he is arguing the Council should have entered the site and fixed a notice outside every compound. Setting aside the fact the appellant would have been unlikely to give permission for the Council to enter the site unless required to do so by law, in my view that is not what is required. The premises are the appeal site which is a single planning unit. Within it are numerous compounds but they do not comprise individual 'premises' in terms of the Act. It is quite normal for an enforcement notice to be fixed to the gates of a large site in mixed use so this argument has no weight".

14. Before me, Mr Whale submitted that the inspector erred in law by failing to have regard to the distinctions in the TCPA 1990 between "the land", on the one hand, and "premises" on the other.

15. Section 172(2) TCPA 1990 provides an enforcement notice shall be served on the owner and occupier of the land to which it relates. This makes provision for the persons on whom the EN should be served.

16. The mechanism for service is contained in section 329 of the TCPA 1990. Subsection (2) provides:

> "Where the notice … is required … to be served on any person … as an occupier of premises, the notice … document shall be taken to be duly served if—
>
> > (a)it is addressed to him either by name or by the description of … 'the occupier' of the premises (describing them) and
> >
> > …
> >
> > (b)it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and—
> >
> > …
> >
> > (ii)it is … affixed conspicuously to some object on those premises."

17. Section 329(3) TCPA 1990 governs service if it appears to the authority that any part of the land is unoccupied. In those circumstances, due service is achieved by affixing the notice conspicuously to some object "on the land".

18. Mr Whale submitted that the occupiers' compounds, which they rent, plainly are the occupiers' individual premises and the inspector could not reasonably have concluded to the contrary. Each individual occupier has an agreement to rent and to pay rent for a particular compound. This does not entitle them to occupy or use the entirety of the appeal site. The inspector's proposition that the law does not require the EN to be affixed to each compound in cases such as this is contradicted by the terms of section 329(2) and (3) TCPA 1990. Mr Whale submitted that fixing a copy of the EN to some object on the land, perhaps next to the M25 gantry or near the pond, could not amount to affixing it to an occupier's premises.

19. In response, Mr Clapp submitted that the inspector was entitled to treat the site as a single planning unit, in the exercise of his planning judgment. The site is large, it is occupied by hundreds of containers, and the identity of the occupants is constantly changing. Not even the applicant knew who was there at any one time. There was no general principle that, where sub-parcels of land are rented or occupied within a larger parcel of land, they should be considered as independent planning units: see *Rawlins and Gregory v Secretary of State for the Environment* [1990] 60 PNCR 413; *Ralls v*

*Secretary of State for the Environment* [1998] JPR 444; *R (KP JR Management Co Ltd*) *v Richmond upon Thames LBC* [2018] EWHC 84 (Admin).

20. Mr Whale does not dispute that the inspector was entitled to treat the site as a single planning unit, but submits that that is a different question to the question as to how the council should serve occupiers.

21. Mr Clapp further submitted that the applicant, and indeed the council and the inspector,were all mistaken in applying section 329(2) and (3) TCPA 1990, because those provisions do not apply to enforcement notices. They only apply to notices or documents which are required or authorised to be served on persons with an interest in premises or as occupier of premises. Enforcement notices do not impose such requirements, instead requiring service on the owner and occupier of the land and persons with an interest in the land, pursuant to section 172(2) TCPA 1990.

22. Mr Whale observes that a different view was taken by the High Court in *Cash v Secretary of State for Communities and Local Government* [2012] EWHC 2908 (Admin) where it was common ground that section 329(2) and (3) TCPA 1990 was applicable to the service of enforcement notices and that was accepted by the court.

23. I am not sure whether Mr Clapp is correct about the application of section 329(2) and (3) TCPA 1990. If he is correct, I am concerned by the fact that the Secretary of State concedes that the inspector misdirected himself on the scope of those subsections. I am left in some doubt as to the correct legal position where a local planning authority wishes to serve an EN on occupiers of land, who are occupying sub-parcels of land on a larger site or where the identities of occupiers are unknown or where it is unclear whether land is occupied or not. If the powers in section 329(2) and (3) are not available, I ask rhetorically what, if any, powers are available to local planning authorities in such circumstances?

24. I consider this is a matter of some importance and these issues ought to be explored further at an appeal hearing. Therefore, I grant permission to appeal on ground 1.

**Ground 2**

25. Section 176(5) TCPA 1990 provides:

> "Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him".

26. At paragraph 31 of the decision, the inspector considered whether the occupiers were substantially prejudiced if they were not served with the EN. He concluded that they were not prejudiced because MJL Contracts and other occupiers, who were not served, did not make representations or attend the inquiry, despite the fact that they knew about it, because of letters sent to them by the council.

27. MJL Contracts wrote to the inspector explaining that they occupied a yard at the site and had done so since 2021 under a tenancy agreement. The terms of the tenancy agreement were that it ran for five years and it was renewable on the expiry date. Rent was payable on the 1st day of each month, at £8,500 per month, plus VAT, for yard space equating to 20,000 square feet. The letter stated:

> "Had we been aware of the enforcement notice, we would have appealed as the yard is critical to our business operations and I am not aware of any other yards we could relocate to".

28. Mr Clapp submitted that the inspector's approach was a reasonable one, the allegations of prejudice were speculative and not particularised. He submitted that the inspector was reasonably entitled to consider that the relevant occupants were aware of the EN and the Inquiry, and that conclusion was not *Wednesbury* unreasonable.

29. I consider that Mr Whale's submissions on ground 2 are arguable. The inspector dealt with this important issue in a very summary fashion without considering the position of occupants in any detail, including MJL. As the council's planning witness conceded at the inquiry, one or more of the occupiers might have appealed if they had been served with the EN and relied on different grounds to the applicant or chose to argue appeal grounds differently. I note that the applicant abandoned ground (a) at the beginning of the inquiry.

30. The letters which the council apparently sent to occupiers listed in the 2024 PCN were obviously sent too late to enable the occupiers to appeal against the EN issued in 2021. As the inspector observed at paragraph 25, the PCN should have been sent before the EN was issued.

31. I consider that *Cash v The Secretary of State for Communities and Local Government* [2012] EWHC 2908 (Admin) was decided on different facts and is distinguishable. I also consider that the Waltham Forest appeal decision was decided on different facts and is distinguishable.

32. On both grounds 1 and 2, I am not persuaded that the *Simplex* principle is applicable.

**<u>Ground 3</u>**

33. Under ground 3, the applicant submitted that the only relevant date for a ground (b) appeal is the date of issue of the EN and the inspector erred in finding to the contrary.

46. The inspector concluded, at paragraph 33 of his decision:

> "33. Before considering the individual allegations there is a general point that the appellant argues if some of the uses or activities had ceased before the issue of the notice they could not be included. This is wrong as a matter of commonsense. Ground (b) is couched in the past tense that "those matters [alleged] have not occurred", not that they are not occurring. For example allegation (b) "the deposition of mixed non-inert and inert waste materials" clearly happened in the past. If a notice could only deal with ongoing matters then lots of unlawful activities would be impossible to enforce against. "

34. Mr Whale submitted that the inspector wrongly interpreted ground (b), literally and in isolation, without considering its purpose and context. A local planning authority cannot properly conclude that it is expedient to take enforcement action if there is no longer a breach of planning control. The provisions are intended to be remedial not punitive and this approach removes any incentive to remedy the breach.

35. Mr Whale further submitted that grounds (a) (c) and (d) were inconsistent with the inspector's construction. Ground (a) is referable to a breach of planning control for which planning permission may be granted. It would make little or no sense to grant

planning permission for a development which no longer existed when the EN was issued. As for ground (c), it would make little or no sense to conclude that a matter did not constitute a breach of planning control, potentially years before the enforcement notice was issued. As for ground (d), this is expressly referable to the date of issue of the enforcement notice.

36. In my judgment, Mr Whale's interpretation of ground (b) is unarguable for the reasons given by Mr Clapp. The starting point for the interpretation of a statutory provision is to consider the natural and ordinary meaning of the words in their statutory context.

37. Ground (b) may succeed if the matters comprising a breach of planning control "have not occurred". It is clearly couched in the past tense. It requires an appellant to show that the relevant breach did not take place at all (subject to the time limits for enforcement).

38. That interpretation is supported by a contextual reading of the enforcement regime.

39. By section 172(1)(a) TCPA 1990, a local planning authority is empowered to issue an enforcement notice where it appears to them that "there has been a breach of planning control" and it is expedient to enforce against the breach *(emphasis added)*. The power to issue an enforcement notice therefore arises where a breach has taken place. Plainly, section 172(1)(a) TCPA 1990 does not require a breach to be ongoing for an enforcement notice to be served. It would be bizarre if an enforcement notice could be lawfully served under section 172(1)(a) TCPA 1990 because a breach had taken place, but successfully appealed against under section 174(2)(b) TCPA 1990 if it was not ongoing when enforced against.

40. The power to issue the enforcement notice corresponds with the circumstances in which a ground (b) appeal may succeed. If a local planning authority is incorrect under section 172(1)(a) and factually a breach had not occurred prior to the service of the enforcement notice, then ground (b) may be made out.

41. Ground (c) is also couched in the past tense providing a ground of appeal, if the relevant factual matters occurred, but did not constitute a breach of planning control. Again, the key issue is that some enforceable matter took place prior to the service of the enforcement notice, not that it is ongoing at the time of the enforcement notice.

42. In contrast, under ground (d), the scheme expressly provides that the applicable date is "the date when the notice was issued". There is a presumption that words in statutes are deliberately chosen (*McMonagle v Westminster CC* [1990] 2 AC 716, at 726D to F) and that, where different words are used a different meaning is intended (*Re Globespan Airways Ltd* [2012] EWCA Civ 1159 at [42]).

43. Mr Clapp's construction also conforms with the wording of the time limit provisions in section 171(b) TCPA 1990 which use the term "where there has been a breach of planning control" in the past tense.

44. In the case of a breach comprising operational development, the enforcement action may not be taken after the end of ten years, which begins on the date on which the operations were substantially completed. In the case of a breach comprising material change of use, the same time limit applies, but time begins to run with the date of the breach.

45. It is clear from this that the only limitation imposed by the Act on a local authority's power to serve an enforcement notice is that the breach occurred (i.e. there was substantial completion of some operational development or there was a material change of use). The consistent reference in the TCPA 1990 is to the factual question of whether a breach has taken place. There is no reference to a requirement that the breach "is occurring".

46. Mr Clapp also relies upon the statutory purpose of the enforcement regime.

47. An enforcement notice is required to specify the steps which the authority requires to be taken, or activities required to cease, to achieve the purposes within section 173(4) TCPA 1990. Those purposes include remediation of any breach, which may include "restoring of the land to its condition before the breach took place". There is no suggestion that a breach need be ongoing for such a requirement to be imposed and, indeed, such a requirement would inhibit restoration from being effected in certain circumstances. For example, a local authority could not require damage, caused during subsequently ceased unlawful material change of use, to be remedied if they could only enforce whilst that use was ongoing. This is in accordance with the

applicant's reliance on the nature of the enforcement regime as remedial rather than punitive.

48. I agree with Mr Clapp's submission that Mr Whale's construction of section 174(2)(b) would frustrate the statutory purpose of the enforcement regime, because it would prevent authorities from effectively enforcing against breaches of planning control. If local authorities could only enforce against breaches which were ongoing at the time an enforcement notice was issued, then those engaged in protracted breaches of planning control could cease the breach immediately prior to anticipated enforcement action, appeal against any enforcement notice under ground (b) on the basis that the conduct complained of was not ongoing, and later resume the breach. That is why the enforcement notice is not required to catch the breach of planning control "red-handed", but may enforce against an identified breach of planning control to ensure that it either ceases, or does not recur whilst the enforcement notice is in place.

49. Mr Whale has referred to two other inspectors' appeal decisions, in addition to the two applications before me today.

50. In the *Nutley Dean Business Park* appeal (APP/L3625/C/19/3233726), inspector Andrew Walker said at paragraph 3, that for the appeal to succeed under ground (b) “the appellant must satisfy me on the balance of probabilities that matters stated in the notice had not occurred as a matter of fact on the date it was issued”. However, there was no analysis as to why the inspector had departed from the actual wording of ground (b), presumably because the inspector’s conclusions did not turn on that point. The inspector’s conclusions were that the council had simply mischaracterised the relevant breach of planning control (not that they had attempted to enforce against a breach which was not ongoing) which is why the ground (b) appeal succeeded in that case. The allegation in the relevant enforcement notice was “without planning permission, the material change of use of the land from agricultural land within the designated Green Belt, to land used for storage.” The council’s position at the hearing, however, was that the relevant “pre-existing use of the planning unit was in fact a mixed use of agricultural and B2 general industrial and B8 storage uses” and the present unlawful use was a mixed use including agricultural land and B2 and B8 use. Accordingly, Inspector Walker found the notice allegation was “wholly wrong”

(paragraph 9) as to a change of use taking place "from a single primary agricultural use" and "a change of use having been made to a single use of storage" (paragraph 6). The ground (b) appeal succeeded because in the material change of use allegation, the council had mischaracterised both the starting and the end point: the alleged change of use that was alleged had not factually occurred (paragraph 6).

51. In the *Abbey Glen* appeal (APP/J4423/C/24/3340817), inspector A. Walker stated at paragraph 12:

> "The wording of section 174(2)(b) of the Town and Country Planning Act 1990 is in the past tense. It is only concerned with whether the breach has occurred, not whether it was occurring at the time the notice was issued."

52. The Inspector subsequently found:

    a. the appeal site was in unlawful Class B2 use up to November 2022 (paragraph 39);

    b. the appeal site was in lawful Class E(g)(iii) use on 13 February 2024, the date of issue of the enforcement notice (paragraph 41).

53. Ground (b) succeeded because the enforcement notice alleged Class B2 use on the date of issue (paragraph 41). However, it only did so because in the enforcement notice itself the breach relied upon was an ongoing material change of use rather than a historical one which had ceased. The inspector made that point very clearly at paragraph 13:

> "under paragraph 4 of the notice there are numerous references to the 'current use.' There is no reference to the use being historical. Within the four corners of the notice it is plainly clear that the allegation refers to the current use of the site (at the time the notice was issued). It does not allege the use has historically taken place and seeks to prevent it from occurring again."

54. The inspector made it clear why the specific alleged breach in the enforcement notice limited him to consideration of whether the breach was ongoing rather than had

simply occurred within the statutory time limit. At paragraph 14, he explained that the notice must enable persons to know what the matters said to constitute the breach are and as such “if the notice was alleging an historical use of the Site in Class B2 use then it must say so.”

55. On a proper analysis, I consider that neither of these decisions support Mr Whale’s construction of ground (b), or undermine Mr Clapp’s construction.

56. Finally, the proper construction of ground (b) appears to be academic in this appeal, because the applicant did not identify any breach of planning control which was not said to be ongoing. At paragraphs 35 to 41 of the decision, the inspector made findings on the periods when the various breaches were taking place which have not been challenged. The inspector did find that the activities amounting to the material change of use of the land were ongoing on 20 September 2021. In each case, in respect of each alleged breach, the inspector formed the view that the relevant activity was ongoing in 2021. So the inspector's approach and findings complied with the applicant's submission as to how ground (b) should operate, in any event.

57. For these reasons, I conclude that ground 3 is unarguable and permission should be refused.

58. In conclusion, I grant permission to appeal on grounds 1 and 2. It follows that permission should be given on ground 4, on the issue of costs, in case grounds 1 and 2 succeed. Permission is refused on ground 3.

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