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Case Comment

Caravan stationed on agricultural holding and used as a residence - enforcement notice varied on appeal - non-compliance

Subject: Planning

Keywords: Appeals; Caravans; Enforcement notices; Variation

Case: Masefield v Taylor [1987] J.P.L. 721 (QBD)

***J.P.L. 721** The appellants occupied a caravan on an agricultural smallholding out of necessity since they were unable to obtain planning permission for the erection of a dwelling-house on a ***J.P.L. 722** site. In October 1982 the West Dorset District Council served an enforcement notice in respect of the smallholding; the appeal was dismissed by an Inspector who varied the notice to read as a change of use from agriculture to the mixed use of agriculture and stationing of a caravan for residential purposes. The notice required cessation of the stationing of the caravan and its removal from the land. The notice was not complied with and the appellants were prosecuted in the magistrates' court in June 1985.

The appellants appealed by way of case stated to the Divisional Court.

MANN J. said that the justices had set out a number of possible questions for the decision of this court, but elided them, correctly, into two questions as follows: “(a) Whether it is necessary to serve an amended Enforcement Notice where the amendments are made by the Secretary of State in the course of an appeal, and are well known to all parties. (b) Whether we were right in holding that the validity of the Enforcement Notice could be reconsidered before us in this particular case.”

So far as the first question was concerned, he would answer it that it was not necessary. There was no provision in the Act or in the rules relating to enforcement notice appeals requiring a re-service. The structure of the Act was simply that the notice was served. If there was an appeal the notice might be amended, but it was the same notice and no re-service as amended was requisite.

So far as the second point was concerned, it arose because, as he sought to do before this court, Mr. Masefield endeavoured to argue that the matters alleged in the enforcement notice did not, by the time of the hearing before the justices, constitute a breach of planning control and also that the steps required by the notice to be taken exceeded what was necessary to remedy the breach of planning control. He said in particular that the steps did not recognise any tolerance which might be given under the General Development Order.

Whether or not the matters alleged in the enforcement notice constituted a breach of planning control and whether or not the steps were excessive were matters which were deployable in an appeal under section 88 of the Town and Country Planning Act 1971. Accordingly, the Town and Country Planning Act 1971, s.243 applied and in particular subsection (l)(*a*) which provided: “Subject to the provisions of this section--(a) the validity of an enforcement notice shall not, except by way of an appeal under Part V of this Act, be questioned in any proceedings whatsoever on any of the grounds [on which such an appeal may be brought.]” Those matters could not be raised, therefore, before the justices. There was a decision of the Court of Appeal, Criminal Division, binding upon this court, *R.* v. *Smith (Thomas George),* 48 P. & C.R. 392, which was precisely in point.

Accordingly, he would answer the second question posed by the justices. Yes, they were correct in holding that the validity of the enforcement notice could not be reconsidered before them in this particular case.

It was suggested by Mr. Masefield that it having been recognised subsequent to the initial enforcement notice by the Department of the Environment in another appeal that there was an agricultural operation being conducted upon the smallholding, there was now a planning permission by virtue of Class VI of the General Development Order ***J.P.L. 723** 1977 and that accordingly the enforcement notice ceased to be effective by reason of section 92 of the Act which dealt with the

subsequent grant of planning permission. Quite apart from the difficulty that section 92 had been held not to embrace a permission under the General Development Order, Class VI would avail nothing in regard to the caravan which was occupied as a residence because Class VI expressly excepted dwellings. Accordingly, section 92 was of no assistance.

He would, therefore, answer question (a) No and question (b) Yes and say that section 92 had no materiality.

WATKINS L.J. agreed.

Appeal dismissed.

Comment. The fact that the appellants were representing themselves probably explains why the first point was taken. Although there is no previous authority on the issue, the whole tenor of the legislation suggests that following an unsuccessful appeal against an enforcement notice, there is no need to re-issue the notice even if it is corrected or varied by the Secretary of State. This is why a notice cannot be corrected or varied if it would cause injustice.

The second point is more interesting. Mann J. states that it has been held that section 92 does not embrace a grant of permission by the General Development Order but does not give any reference. Section 24 which is the section under which the GDO is made, refers to “the granting of permission” and so technically a class of permitted development is a grant of permission. Also in *Cynon Valley Borough Council* v. *Secretary of State for Wales and Oi Mee Lan* [1986] J.P.L. 760, Balcombe L.J. specifically stated that the Act drew no distinction between a particular permission and a general permission under the Order; but see comment at page 765. So if following an enforcement notice, the GDO were to be *changed* so as to make authorised what had been forbidden by an enforcement notice, it is certainly arguable that the notice would cease to have effect. The Scottish equivalent of section 92 (section 89A) covers both permissions “granted or deemed to have been granted subsequent to the service of the notice.” This is presumably aimed at permissions which are expressly *deemed* to be granted; as in the case of development by planning authorities, and does not resolve the position either way.

As Mann J. points out the issue was irrelevant to the present facts as Class VI does not cover residential dwellings and in any case Class VI was not issued after the service of the enforcement notice. A point not taken on appeal, which might have been raised, is whether the use of the caravan was in fact an agricultural use; see *Hancock* v. *Secretary of State for the Environment* [1987] J.P.L. 360. There it was held that a farmhouse and garden were clearly being used for agriculture. The placing of a caravan on land is not usually taken to be a building operation and if the residential use of it was ancillary to the agricultural use, it could be that as in *Hancock* its use should be considered to be agricultural.

J.P.L. 1987, Oct, 721-723