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Wales Enforcement Conference 3 November 2016

Recent cases on enforcement

Meyric Lewis
Barrister, Francis Taylor Building



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Time limits

Ground (f) appeals

Injunctions/s. 178

Criminal proceedings/fines/PoCA

Misc.





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Time limits

Kestrel Hydro [2016] EWCA Civ 784 – enforcement notice alleging MCU can require related operational development which has been in place for longer than 4 years to be removed if it is “integral to” or “part and parcel of” the unlawful change of use
(ie upholding **Murfitt** and **Somak** line of case law)





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NB though **Bowring** [2013] EWHC 1115 (Admin) – second kitchen in unlawful HMO conversion could not be required to be removed if it was installed before MCU and/or could be used for a different lawful purpose

(BUT remitted to Inspector who concluded it was “integral” to MCU)





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Ravensdale [2016] EWHC 2374 (Admin) – 4 year rule; burden of proof on appellant; Inspector entitled to conclude that statutory declarations lacked detail and that tenancy agreements did not provide sufficient evidence of use/occupation for 4 years





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Ground (f) appeals

Keenan [2016] EWHC 427 (Admin) – submission that under ground (f) appeal Inspector should have considered “obvious alternative” to removal of all items from land (rather than just some of them) rejected





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See too **Miaris** [2016] EWCA Civ 75 – appellant can't raise lesser steps alternative where no ground (a) appeal and requirements of notice are to remedy the breach rather than remedy impact on amenity





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Compare **Ioannou** [2014] EWCA Civ 1432 – Inspector correct to conclude that he could not entertain alternative 3-flat scheme under ground (f) as preferable to 5-flat scheme the subject of the EN

See also **Najafi** [2015] EWHC 4094 (Admin) – Inspector does not have to consider alternatives which are not put to him





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Injunctions/s. 178

Ashford BC v. JR [2016] EWHC 908 (QB) – injunction continued but suspended pending EN appeal (human rights of gypsy family) but requirement for vacation of site 7 days after decision if appeal unsuccessful

Basildon DC v. Tidd 18 Oct 2016 – refusal of mandatory requirements of injunction on unauthorised site but negative req'mts continued to maintain status quo



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Compare **Stratford on Avon DC v. Persimmon Homes** [2015] EWHC 3593 (QB) – not appropriate to grant injunction to enforce breaches of conditions re.

delivery hours, banking, gate person and landscaping

Submission:

Defendant is *“the luckless victim of a misguided attempt on the part of the Claimant’s officers to appease the implacable hostility of a well connected and vociferous lobby of councillors and local residents”*.





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Hackney LBC v. Manorgate [2015] EWHC 2025 (QB) – not appropriate to grant mandatory s. 187B injunction requiring removal of building extensions since no change since EN and no evidence of consideration of section 178 ‘direct action’ instead

Contrast eg **Harwood/Gladden** [1994] 1 PLR 30 – injunction in former granted where EN in force; in latter “Spitfire” threat (following tank and Churchill)



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s. 178

Eastwood [2016] EWCA Civ 437 – not irrational or perverse for LPA to exercise powers to clear site which had been in use in breach of planning control for some time (EN 2009; s. 178 resolution 2013)





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Criminal proceedings

Wychavon DC v. Rodenhurst 1 July 2016 – DJ erred in law concluding that making an appeal against refusal of retrospective permission for development covered by ENs was a genuine attempt to regularise the unlawful works amounting to a defence under section 179(3) of doing everything the defendants could reasonably have been expected to do to secure compliance with ENs



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Matsons Ltd v. Leicester CC [2016] EWHC 642 (Admin) –
whether site was in use as a “builder’s merchants” was a
question of fact not of expert evidence
(Expert was “attempting to set himself up in place of
Crown Court”)





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Newham LBC v. Khalis Miah [2016] EWHC 1043 (Admin)
– LPA could use proprietorship register to establish
“usual or last known place of abode”; defendant was
aware of notice subsequently and before date of alleged
offence and so could not claim protection of section
285(2) (below)





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285(1) The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(2) Subs. (1) shall not apply to proceedings brought under s. 179 against a person who... (c) satisfies the court—

i) that he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and

(ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.





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Compare **Newham v. Miah** above with **Newham LBC v. Ahmed** [2016] EWHC 679 (Admin) – service at address recorded on proprietorship register and by ordinary post = good service



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Fines/PoCA

R v. David Kohali [2015] EWCA Crim 1757 – Judge erred in imposing a fine taking account of a period when D made a financial gain which did not fall within the dates between which he was alleged to be in breach of EN



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Hussan Hussain [2014] EWCA Crim 2344 – PoCA
confiscation order properly made for full amount of rents
received by landlord from tenants of illegal conversion
(£494K and £20K fine)

Compare **Del Basso** [2010] EWCA Crim 1119

See further Planning and Proceeds of Crime Act [2014]
JPL 972



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Misc.

Goremsandu [2015] 2194 (Admin) – EN not rendered ineffective by subsequent grant of PP for altered version of extension

Akhtar [2015] EWCA Crim 1430 – EN requiring cessation of residential use of farm outbuildings does not cease to have effect when PP granted for use as holiday homes



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Collins v. Sec of State [2016] EWHC 5 (Admin) –
misdirection in ground (b) appeal where EN alleged:
“without planning permission, change of use of the land
from woodland to create a vehicular access for waste
disposal” – when evidence was that access was laid for
purpose of facilitating tree-felling



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Doncaster MBC 6 Oct 2016 – unmet need for traveller sites/personal circumstances vs. harm to Green Belt

Jane Lee v. Sec of State [2016] EWCA Civ 558 – no “very special circumstances” to outweigh harm to Green Belt

Durant [2016] EWHC 321 (Admin) – not disproportionate to require removal to alternative site despite interference with ECHR art. 8 rights

Note also **Jackson** [2015] EWHC 20 (Admin)



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