

Inspector: Mr D. G. Baldock
P.I. Refs.: APP/M9496/C/05/2000734,
APP/M9496/C/05/2000744
M.P.A. Ref.: Min 2382

IN THE MATTER OF APPEALS
AGAINST A PURPORTED
ENFORCEMENT NOTICE DATED 23rd
NOVEMBER 2004 ISSUED BY THE
PEAK DISTRICT NATIONAL PARK
AUTHORITY IN RESPECT OF LAND
AT HASSOP, DERBYSHIRE
B E T W E E N :

BLEAKLOW INDUSTRIES LIMITED
and
MMC MINERAL PROCESSING
LIMITED
and
PEAK DISTRICT NATIONAL PARK
AUTHORITY

**SUBMISSIONS OF THE APPELLANT
BLEAKLOW INDUSTRIES LTD**

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SUBMISSIONS OF THE APPELLANT

BLEAKLOW INDUSTRIES LTD

1. These Skeleton arguments set out why the purported enforcement notice dated 23rd November 2004 (“the enforcement notice”) issued by the Peak District National Park Authority (“PDNPA”) is a nullity.

2. In its paragraph 5, the enforcement notice required the taking of the following steps: -
 - i. cease the winning and working of limestone other than the working of limestone where it is ancillary to the working of fluorspar and barytes
 - ii. (a) submit to the mineral planning authority for its approval a scheme to remedy the breach of planning control caused by unlawful limestone extraction, such scheme to include proposals for implementation of the scheme within the timescale set out in the scheme
(b) If the scheme submitted to the mineral planning authority to remedy the breach of planning control has not been determined by it within two months of the date of submission, unless that time has been extended by agreement between the parties in writing, the applicant shall be entitled to implement the submitted scheme
(c) In default of submission of any scheme within six months after this notice takes effect, or if the scheme submitted has been refused, the mineral planning authority shall impose a scheme to remedy the breach of planning control including time for implementation of such a scheme, such scheme to be communicated within a further period of six months from the date by which the scheme was due to be submitted
 - iii. Implement the restoration scheme under 5(ii)(a) or (c) whatever is applicable.

Statutory Provisions

3. Section 173(3) and (9) of the Town and Country Planning Act 1990 provides that an enforcement notice shall specify the steps to be taken and the time within which they are to be taken:

(3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.

(9) an enforcement notice shall specify the period at the end of which any steps are required to have been taken...

4. Section 174 of the 1990 Act provides rights of appeal in respect of, *inter alia*, the steps to be taken and the time in which these steps are to be taken:

(1) A person having an interest in land to which an enforcement notice relates... may appeal to the Secretary of State against the notice...

(2) An appeal may be brought on any of the following grounds – ...

(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.

Binding Authorities

5. In the leading authority of Miller-Mead v. Minister of Housing and Local Government¹ Upjohn LJ stated: –

This [the enforcement notice] is a most important document, and the subject, who is being told he is doing something contrary to planning permission and that he must remedy it, is entitled to say that he must find out from within the four corners of the document exactly what he is required to do or abstain from doing.²

Then the notice may require such steps as may be specified in the notice to be taken within such period as may be specified for restoring the land to its earlier condition or for securing compliance with conditions. To be operative, therefore, the notice must specify these things, and if, for example, it does not specify what is to be done or within what period it is to be done, it will fail to have effect as an enforcement notice and the owner or occupier need not comply with it.³

As a matter of common sense, if it [the enforcement notice] does not specify the steps to be taken to remedy the alleged breach of planning permission... with proper and sufficient particularity, the notice will not be operative.⁴

But supposing the notice on the face of it fails to specify some period required by subsection (2) or (3). On the face of it the notice does not comply with the section; it is a nullity and is so much waste paper. No power was given to the justices to quash in such circumstances for it was quite unnecessary. The notice on its face is bad. Supposing then upon its true construction the notice was hopelessly ambiguous and uncertain, so that the owner or occupier could not tell in what

¹ [1963] 2 QB 196, CA.

² Page 224.

³ Page 226.

respect it was alleged that he had developed the land without permission... or, again, that he could tell with reasonable certainty what steps he had to take to remedy the alleged breaches. The notice would be bad on its face and a nullity, the justices had no jurisdiction to quash it, for it was unnecessary to give them that power, but this court could, upon application to it, declare that the notice was a nullity.⁵

...the test must be: does the notice tell him fairly what he has done wrong and what he must do to remedy it?⁶

6. Lord Diplock stated: –

The notice must also, if it is to be effective at all, specify the steps to be taken as therein set out...⁷

7. Miller-Mead is summarised in *Enforcing Planning Control: Good Practice Guide* (1997):⁸

5.4 The leading statement of the legally correct approach to the content of an enforcement notice is found in Lord Justice Upjohn's judgment in the Court of Appeal, on 12 December 1962, in the case of *Miller-Mead v. Minister of Housing and Local Government...*, where he said that the recipient of an enforcement notice "is entitled to say that he must find from within the four corners of the document what he is required to do or abstain from doing". Lord Justice Upjohn also identified a test to be applied in deciding whether an enforcement notice "satisfied the statutory requirement. He said "... the test must be: does the notice tell him fairly what he has done wrong and what he must do to remedy it? "

5.5 LPAs are naturally concerned to ensure that any enforcement notice they may issue is not subsequently found to be a "nullity" or "invalid". In the case of *Miller-Mead v. Minister of Housing and Local Government*, Lord Justice Upjohn distinguished between these two legal concepts. A notice is "bad on its face and a nullity" if someone cannot tell in what respect he had allegedly failed to comply with a condition, or could not tell with any reasonable certainty what steps must be taken to remedy the alleged breach. Such a notice would be "so much waste paper"; and, for that reason, there would be no need (and thus no statutory power) to quash it...

⁴ Page 226.

⁵ Pages 226-227.

⁶ Page 232

⁷ Page 235.

8. In Kaur v. Secretary of State for the Environment and Greenwich London Borough Council⁹ the inspector had varied an enforcement notice to require reconstruction of a roof in accordance with details to be agreed with the local planning authority. Because of the uncertainty that this introduced the decision was quashed.

9. The enforcement notice in R (Lynes) v. West Berkshire District Council¹⁰ failed to specify a period for compliance as required by section 173(9). Harrison J held that this was a nullity and therefore without legal effect. It could not “be the subject of amendment by the Secretary of State under s.176”.¹¹ Harrison J continued:

... the failure to comply with a basic statutory provision for a valid enforcement notice... cannot be said to be a technicality. An enforcement notice which, on its face, does not comply with such a requirement, is a nullity and therefore incapable of amendment.

10. In the recent judgment of Payne v. National Assembly for Wales and Caerphilly County Borough Council¹² the requirements of an enforcement notice included the submission of a scheme and the implementation of an approved scheme.¹³ The judgment confirms that, notwithstanding the passage of time and changes to the legislation, Miller-Mead remains good law and a binding authority:

... the statutory provisions with which the court was concerned were not identical to the current statutory provisions. Nonetheless the decision in Miller-Mead has never been doubted so far as I am aware and the judgment of Upjohn LJ has been followed on many occasions in relation to his analysis of the difference between an enforcement notice which is a nullity and one which is invalid or defective but capable of correction or variation.¹⁴

⁸ Paragraphs 5.4 and 5.5.

⁹ 61 P & C R 249, Sir Frank Layfield QC.

¹⁰ [2002] EWHC 1828, [2003] JPL 1137, Harrison J.

¹¹ Page 1146, paragraph 48.

¹² C0/6451/2004, *unreported*, Wyn Williams QC.

¹³ Transcript of the judgment, paragraph 10.

11. In Payne Counsel for the Welsh Assembly argued to the requirement for the submission scheme could be severed from the other requirements. In response to that the judge held: -

...Counsel for the First Defendant argues that even if sub-paragraph (f) was uncertain, nonetheless that does not have the effect of making the whole notice a nullity. He quotes no authority for that proposition. In argument he submitted that the Court or perhaps the First Defendant had the power to delete the sub-paragraph from the Notice. I do not accept either of those submissions. In all cases on nullity of enforcement notices most of the notice complies with section 173 of the 1990 Act or its predecessor. I know of no case where the fact that only part of the notice was uncertain has allowed the Court to conclude that the notice as a whole complies with the section. Certainly no such case was cited to me. Further, I do not see how the Court or the First Defendant can have power to delete the offending uncertain part and thereby render the notice operative. ...¹⁵

12. The judge found that the Inspector's conclusion that the enforcement notice did not comply with section 173 because it was uncertain on its face did not disclose an error of law, commented on the deficiencies of the relevant requirement and held that the notice was a nullity.¹⁶

Submissions

13. The Appellants cannot "find out from within the four corners of the document exactly what [they are] required to do". Rather they would be required to comply with a scheme which is not included in the enforcement notice. The notice fails to specify the steps to be taken, leaving this to be determined at a later stage. At present nobody knows what the consequences of it will be. It also fails to specify the period within which these yet-to-be-determined steps are to be taken.

¹⁴ Paragraph 23.

¹⁵ Paragraph 31

14. Hence applying the long-established and often followed principles in Miller-Mead the enforcement notice is inoperative and bad, and fails to have effect. It is a nullity.

15. These principles have previously been applied in the case of enforcement notices that involved schemes to be approved and have held such notices to be nullities. There is no distinction of substance and relevance between the present case on the one hand and Kaur and Payne on the other.

16. The requirements of the purported enforcement notice do not comply with section 173(3) and (9) in that rather than “specify the steps which the authority require to be taken” it defers this matter. In failing on its face to comply with section 173 it is a nullity: Lynes.

17. The defective requirement cannot be severed. The enforcement notice as a whole is defective: Payne.

18. An enforcement notice that is a nullity may not, under any circumstances, be rectified by amendment: Lynes

19. Furthermore the requirements of the enforcement notice would deprive those with an interest in land of an appeal under section 174(2)(f) replacing an Inspector’s or the Secretary of State’s determination of the appropriateness of a scheme with a determination in which the local planning authority was judge and jury in its own cause. This constitutes blatant defiance of the clear will of Parliament. PDNPA cannot reasonably argue that a notice is valid under Part VII of the 1990 Act, while at the same time acting contrary to the clear intentions of that Part.

¹⁶ Paragraphs 33 and 34.

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