*105 Ormston v Horsham Rural District Council

Positive/Neutral Judicial Consideration

Court
Court of Appeal

Judgment Date
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Court of Appeal

Lord Denning M.R. , Harman and Winn L.JJ.

July 23, 1965

Enforcement Notice—Form—Validity—Allegation that acts of development were both development without permission and a breach of condition—Substantial allegation a development without permission—Requirement of restoration to previous condition without specification of "steps to be taken"—Whether notice bad— Town and Country Planning Act 1947 (10 & 11 Geo. 6, c. 51), s. 23 .

A local planning authority's agents served an enforcement notice under section 23 of the Town and Country Planning Act 1947 [1] which complained of acts of development including the making of a material change of use from a primarily agricultural use to a use for the purposes of repairing and parking motor vehicles. The notice complained that the development had been carried out without the grant of permission save for the "twenty-eight-day" permission granted generally by the Town and Country Planning General Development Order 1950 , and added that the limitation on the "twenty-eight-day" permission had not been complied with. This qualification was intended to meet the decision in *Cater v. Essex County Council [1960] 1 Q.B. 424; [1959] 2 All E.R. 213; 10 P. & C.R. 269, D.C.* , although after the service of the enforcement notice that decision was overruled by *Miller-Mead v. Minister of Housing and Local Government [1963] 2 Q.B. 196; [1963] 1 All E.R. 459; 14 P. & C.R. 266, C.A.*

The enforcement notice required the restoration of the site to its condition before the development complained of.

The plaintiff, the owner and occupier of the site, sought a declaration that the enforcement notice was *ultra vires* and invalid. On his behalf it was contended (*inter alia*) that the notice was bad because it confused an allegation of development without permission with an allegation of non-compliance with a condition subject to which permission was granted, and because it failed to specify the steps to be taken, as provided by section 23 (2) of the Act.

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Held , (1) that inaccuracy or misdescription did not of themselves make an enforcement notice a nullity and as long as it told the recipient fairly what he had done wrong and what he was required to do to put it right, it was good; this notice fulfilled those requirements.

Miller-Mead v. Minister of Housing and Local Government (supra) applied .

(2) That the notice was sufficiently certain since the plaintiff knew what the site was like before he began the development and could restore it accordingly.

Decision of Roskill J., *post* , p. 131, affirmed.

APPEAL from Roskill J.

The facts are stated in the judgments.

Representation

Conrad Dehn for the plaintiff.
Gerard Ryan for the planning authority.

Lord Denning M.R.

In this case the plaintiff, Arthur Jesse Ormston, has some three acres of land or thereabouts not very far from Gatwick Airport. He has been using it for some time for the parking of cars of people travelling by air from the airport. This has brought in considerable revenue to him. He started this use in the year 1958. He applied for planning permission for this use, and it was refused. He continued to use it without permission. But within the four years the local authority, the Horsham Rural District Council, served an enforcement notice on him on January 29, 1962. He appealed against it to the Minister under section 33 of the Caravan Sites and Control of Development Act 1960 . But before the Minister held the inquiry, the plaintiff issued a writ against the Horsham Rural District Council claiming that this enforcement notice was a nullity. Notwithstanding the writ, the Minister went ahead with the inquiry. The inspector reported, and the Minister gave his decision. The Minister amended the notice in certain respects but otherwise he confirmed it. The amended notice is on the face of it a good enforcement notice. Nevertheless the plaintiff has proceeded with the action, claiming that it is a nullity.

Mr. Dehn says that, in order to see whether the enforcement notice is a nullity, we must look at it as it was served before amendment. I quite agree: because, if it was originally a nullity, it was always a nullity and cannot be amended. The enforcement notice says: "The West Sussex County Council being the local planning authority for the Administrative County of West Sussex have delegated to the Rural District Council of Horsham the functions of the said county council under the Act." Then it says: "You are the owner of and occupier of and a person having an interest in the piece or parcel of land situate within the Rural District of ***107** Horsham and more particularly described in the first schedule." That is clear enough. There was a plan attached which shows the three and a quarter acres of land just off Bonnett's Lane not far from the airport.

Then the enforcement notice goes on to say this: "It appears to the council and the council hereby allege: (*a*) That the acts of development specified in the second schedule hereto have been carried out upon the property on a date subsequent to July 1, 1948, and within four years of the date of service of this notice." Then it specifies in the second schedule five particular acts. The first one was the erection in January 1960 of a building with open sides and an asbestos roof. The remaining four acts were making changes in the use of particular parts of the land, such as changing one part from use primarily for agriculture to the storage of motor vehicles, another part to the parking and storage of vehicles, and others to the repairing and garaging of vehicles. The council were saying that those acts of development had been carried out.

Then the enforcement notice says in the next paragraph, paragraph (*b*):

> That the said acts of development have been carried out without the grant of permission required in that behalf under Part III of the Act save that by article 3 of and Schedule I, Class IV (2), to the Town and Country Planning General Development Order 1950 permission was granted for the use of land for any purpose except as a caravan site on not more than twenty-eight days in total in any calendar year and the erection or placing of moveable structures on the land for the purposes of that use and by article 3 of and Schedule I, Class VI (1) , to the said General Development Order permission was granted for the carrying out on agricultural land having an area of more than one acre and comprised in an agricultural unit of building or engineering operations requisite for the use of that land for the purposes of agriculture other than the placing on land of structures not designed for those purposes or the provision and alteration of dwellings.

Then the enforcement notice in paragraph (c) says: "That the limitation subject to which the said permission … was granted has not been complied with in that the changes of use specified in the second schedule hereto continued for more than twenty-eight days in the year of their commencement and have ever since and still continue."

To anyone who is familiar with the law on this matter it is plain what had happened. There was, before this enforcement notice was served, a case decided in 1960 by the Divisional Court— *Cater v. Essex County Council* [2] —in which it was said that where a person had permission under the General Development Order to use the land for twenty-eight days in a year without a special permission, then it could not properly be said without qualification ***108*** that he had *never* had permission. Hence it was held that if an enforcement notice said that the owner had never had permission without mentioning that General Development Order , the enforcement notice was bad. I am glad to say that case has since been overruled by this court in *Miller-Mead v. Minister of Housing and Local Government* . [3]

But while that case was authoritative, the local authorities had to do their best to comply with it. That is why the local authority issued this enforcement notice in this form. In order to comply with *Cater's* case [4] they inserted in sub-paragraph (*b*) the long saving clause about the General Development Order which I have read. It is a very long and very obscure saving clause. But its effect was to tell the person: "We know that you had a twenty-eight days' permission under the General Developments Order for a temporary use, but you do not come within that permission. You carried out these acts of development without the grant of permission." Then in sub-paragraph (*c*) the authority say to him: "In any event you have continued for more than twenty-eight days, so you cannot avail yourself of that permission under the General Development Order ."

Those clauses were obviously inserted by the local authority in an effort to overcome the difficulties created by *Cater's* case. [5] Now Mr. Dehn seeks to turn those clauses against the council. He says the whole notice is bad. He puts forward very technical considerations to suggest it is a nullity. As I listened to the argument, I was glad that this court in *Miller-Mead* [6] rejected all these technical considerations. It is plain from that case that an enforcement notice is not to be regarded with the strict eye of a conveyancer. An inaccuracy or misdescription does not make it a nullity. Quite the contrary. So long as an enforcement notice tells a man fairly what he has done wrong and what he is required to do to put it right, then the notice is good.

Reading through this enforcement notice here, it seems to me that the local authority were saying to the plaintiff: "You put this building on the land in 1960 without permission. You made all these changes in the land by having vehicles there for parking, garaging and repairing. Four years have not gone past. You must remove the buildings and discontinue the use of the property and restore it to the condition in which it was before. "To my mind the notice tells him as plainly as can be what

he has done wrong and what he ought to do. There is no ground for saying that this enforcement notice was a nullity. I agree with the **109* judgment of Roskill J. I think this appeal is unfounded and should be dismissed.

Harman L.J.

I agree. The first ground on which it is said the notice is bad is that it does not comply with section 23 (2) of the Act of 1947. It is said that the authority was bound to choose either to say: "You have never had permission" or: "You had a twenty-eight day permission which could be overrun" and the form of the notice which it gave muddled up the two and was therefore bad. It seems to me that that is a complaint without any substance at all. It does not in the least matter, as I see it, whether what you have done is to go on for more than twenty-eight days or to go on permanently. All it says is: "You have committed an offence and, what is more, the twenty-eight days that you had under the General Development Order does not avail you"; and it makes it quite clear, with a lot of verbiage imposed by the unfortunate decision in *Cater's* case [7] in the Divisional Court, that that was why the local authority was framing its document in that way. To say it was bad because of that seems to me to be quite wrong.

The second point is that it was a false notice because it charges the wrong offence. It charges him with overstepping the twenty-eight days instead of charging him with never having had any permission at all. It is said those two things in some way or other are widely fixed apart, and if you never intended to stop at twenty-eight days, you never could go on for twenty-eight days because you were not making use of that facility. I think that is wholly without substance. During the first twenty-eight days you could not prosecute the man because you would not know whether he would stop on the twenty-eighth day. It is nonsense to say it charges the wrong thing.

As to uncertainty, I have been unable to understand that. I think uncertainty is alleged because it is said that he will not be able to restore the land to what it was before. Restore the property, the notice says, to its condition before the development. He knows what the land was like before he started carrying on these activities upon it and I do not see any hardship to him in being told to put it back as it was. If it merely means getting rid of the buildings and taking the cars off it, well and good: that is enough. To say it is void for uncertainty because it does not specify any further what he had got to do to restore it seems to me to be becoming too meticulous and over-nice in these matters. Quite clearly the notice seems to me to tell him (a) what is complained of and (b) **110* what he has to do. That is quite enough. I think the enforcement notice was perfectly good.

Winn L.J.

I think that, upon any reasonable and rational reading of the terms of this enforcement notice, it is perfectly clear that it does not offend against any of the principles laid down in the *Miller-Mead* decision [8] by this court. I recognise there is a material justification for the bringing of this appeal. It is twenty weeks since Roskill J. gave judgment against the appellant. On the figures given to us of the number of cars and charge *per* car and the outgoings to the Ministry of Aviation, it would seem that possibly £8,000 of revenue may have come in to him during those twenty weeks. Even if that is an over-estimate, there is that, but in my opinion no more, reason why this appeal was brought to this court. I agree that it should be dismissed.

Representation

Solicitors— Blyth, Dutton, Wright & Bennett for Coole & Haddock, Crawley; Lee, Ockerby & Co. for Eager & Sons, Horsham.

Order

[Reported by Grove Hull, Esq., Barrister-at-Law.]

Order accordingly. ***111**

Footnotes

1 Town and Country Planning Act 1947, s. 23 : "(1) If it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission … the local planning authority may … serve on the owner and occupier of the land a notice under this section. (2) Any notice served under this section … shall specify the development which is alleged to have been carried out without the grant of such permission … or … the matters in respect of which it is alleged that any … conditions … have not been complied with, and may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the conditions as the case may be …."

2 *[1960] 1 Q.B. 424* ; *[1959] 2 All E.R. 213* ; *10 P. & C.R. 269, D.C.*

3 *[1963] 2 Q.B. 196* ; *[1963] 1 All E.R. 459* ; *14 P. & C.R. 266, C.A.*

4 *[1960] 1 Q.B. 424* ; *[1959] 2 All E.R. 213* ; *10 P. & C.R. 269, D.C.*

5 *[1960] 1 Q.B. 424* ; *[1959] 2 All E.R. 213* ; *10 P. & C.R. 269, D.C.*

6 *[1963] 2 Q.B. 196* ; *[1963] 1 All E.R. 459* ; *14 P. & C.R. 266, C.A.*

7 *Supra* .

8 *Supra* .