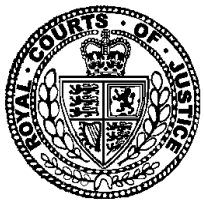

Neutral Citation Number: [2023] EWCA Civ 308

Case No: CA-2022-000285

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT BIRMINGHAM
His Honour Judge Boora
Case No G70BM273

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2023

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE NEWEY
and
LORD JUSTICE ARNOLD

- -

Between:

BIRMINGHAM CITY COUNCIL	**Claimant/ Appellant**
- and -	
DREW BRAVINGTON	**Defendant/ Respondent**

- -
- -

Jonathan Manning (instructed by **City Solicitor, Birmingham City Council**) for the **Appellant**
Richard Drabble KC and Tom Royston (instructed by **Community Law Partnership**) for the **Respondent**

Hearing date: 1 March 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Newey:

1. This appeal raises issues as to whether section 233 of the Local Government Act 1972 ("the 1972 Act") applies in relation to the service by a local authority of a notice under section 83ZA of the Housing Act 1985 ("the 1985 Act") and, if it does, whether the requirements of section 233 were met on the facts of the present case and the consequences of that.

2. The respondent, Mr Drew Bravington, has since 2018 had a secure tenancy of a flat at 9 Clunbury Road, Northfield owned by the appellant, Birmingham City Council ("the Council"). In 2019, however, Mr Bravington was convicted of offences of racially/religiously aggravated intentional causing of harassment/alarm/distress contrary to section 31(1)(b) of the Crime and Disorder Act 1998 and having an article with a blade or point in a public place contrary to section 139 of the Criminal Justice Act 1988. In the light of those convictions, the Council sought to serve on Mr Bravington a "notice of seeking possession" ("the Notice") in which it was explained that the Council intended to apply for a possession order on the strength of section 84A of the 1985 Act. A certificate of service explains that service was effected at 9 Clunbury Road on 3 January 2020 by handing the letter containing the Notice to "Shazana Ellis (girlfriend of D. Bravington)".

3. The present proceedings were issued on 20 May 2020. By them, the Council claims possession of 9 Clunbury Road on the footing that the offences of which Mr Bravington was convicted were "serious" and committed "in the locality of" the property for the purposes of section 84A of the 1985 Act. In his defence, however, Mr Bravington denies seeing the Notice before the claim was served on him.

4. Mr Bravington applied for summary judgment in his favour on the basis that the Council had no real prospect of proving that the Notice had been duly served on him. On 8 July 2021, District Judge Chloë Phillips, sitting in the County Court at Birmingham, acceded to the application and dismissed the claim. On 4 February 2022, His Honour Judge Boora dismissed an appeal by the Council, but the Council now challenges Judge Boora's decision in this Court.

5. In general, a secure tenancy cannot be brought to an end by the landlord except by obtaining an order for possession and executing it. To obtain an order for possession, a landlord normally has to serve a notice pursuant to section 83 of the 1985 Act and establish one or more of the grounds set out in schedule 2 to the Act. However, the Anti-social Behaviour, Crime and Policing Act 2014 introduced an alternative basis for recovering possession through the insertion of what is now section 84A of the 1985 Act. Section 84A provides (to quote its heading) an "Absolute ground for possession for anti-social behaviour". By section 84A(1), the Court is required to make a possession order where it is satisfied that one of the conditions specified in subsections (3)-(7) is met. The condition relevant in the present case is "Condition 1", which subsection (3) explains is that:

> "(a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
>
> (b) the serious offence—

> (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
>
> (ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
>
> (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions."

6. The obligation to make a possession order imposed by section 84A(1) of the 1985 Act is, however, subject to "any available defence based on the tenant's Convention rights, within the meaning of the Human Rights Act 1998" (see subsection (1)) and, more importantly in the context of the present case, applies "only where the landlord has complied with any obligations it has under section 85ZA (review of decision to seek possession)" (see subsection (2)). Section 85ZA allows a tenant to request a review of a landlord's decision to seek an order for possession under section 84A if the landlord is either a local housing authority or a housing action trust. Where such a request is duly made, the landlord must review its decision (subsection (3)) and notify the tenant in writing of its decision on the review (subsection (4)).

7. A further restriction on proceedings for possession on the anti-social behaviour ground is to be found in section 83ZA of the 1985 Act. By section 83ZA(2), the Court is barred from entertaining proceedings for possession of a dwelling-house under section 84A "unless the landlord has served on the tenant a notice under this section". Such a notice must, among other things, state that the court will be asked to make an order under section 84A, set out the landlord's reasons for deciding to apply for the order and inform the tenant of the right to request a review under section 85ZA: section 83ZA(3). Where the landlord is proposing to rely on section 84A's "Condition 1", section 83ZA(5) further requires that the notice:

> "(a) must also state the conviction on which the landlord proposes to rely, and
>
> (b) must be served on the tenant within—
>
> (i) the period of 12 months beginning with the day of the conviction, or
>
> (ii) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned."

8. The Council attempted to satisfy the requirements of section 83ZA of the 1985 Act by serving the Notice on Mr Bravington. As I have said, however, Mr Bravington

contends, and District Judge Phillips and Judge Boora accepted, that the Notice was not validly served.

9. Before District Judge Phillips and Judge Boora, the Council advanced a number of arguments in support of the contention that there had been effective service of the Notice. We, however, are concerned only with whether the Council can rely on section 233 of the 1972 Act to establish due service.

Section 233 of the 1972 Act: context and history

10. Section 233 of the 1972 Act provides so far as relevant:

> "(1) Subject to subsection (8) below, subsections (2) to (5) below shall have effect in relation to any notice, order or other document required or authorised by or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.
>
> (2) Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
>
> …
>
> (4) For the purposes of this section and of section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—
>
> (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
>
> (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership;
>
> and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.
>
> …
>
> (7) If the name or address of any owner, lessee or occupier of land to or on whom any document mentioned in

> subsection (1) above is to be given or served cannot after reasonable inquiry be ascertained, the document may be given or served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.
>
> …
>
> (9) The foregoing provisions of this section do not apply to a document which is to be given or served in any proceedings in court.
>
> (10) Except as aforesaid and subject to any provision of any enactment or instrument excluding the foregoing provisions of this section, the methods of giving or serving documents which are available under those provisions are in addition to the methods which are available under any other enactment or any instrument made under any enactment …."

11. While section 233 of the 1972 Act addresses service *by* local authorities, section 231 deals with service *on* local authorities. It states:

> "(1) Subject to subsection (3) below, any notice, order or other document required or authorised by any enactment or any instrument made under an enactment to be given to or served on a local authority or the chairman or an officer of a local authority shall be given or served by addressing it to the local authority and leaving it at, or sending it by post to, the principal office of the authority or any other office of the authority specified by them as one at which they will accept documents of the same description as that document.
>
> …
>
> (3) The foregoing provisions of this section do not apply to a document which is to be given or served in any proceedings in court, but except as aforesaid the methods of giving or serving documents provided for by those provisions are in substitution for the methods provided for by any other enactment or any instrument made under an enactment so far as it relates to the giving or service of documents to or on a local authority, the chairman or an officer of a local authority or a parish meeting or the chairman of a parish meeting …."

12. Sections 231 and 233 are both to be found in Part XI of the 1972 Act, headed "General Provisions as to Local Authorities". Part XI also includes section 234, which reads:

> (1) Any notice, order or other document which a local authority are authorised or required by or under any enactment (including any enactment in this Act) to give, make or issue may be signed on behalf of the authority by the proper officer of the authority.
>
> (2) Any document purporting to bear the signature of the proper officer of the authority shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority ….
>
> (3) Where any enactment or instrument made under an enactment makes, in relation to any document or class of documents, provision with respect to the matters dealt with by one of the two foregoing subsections, that subsection shall not apply in relation to that document or class of documents …."

13. Provisions comparable (though not identical) to sections 231, 233 and 234 of the 1972 Act were formerly to be found in the Local Government Act 1933 ("the 1933 Act"). That corresponding to section 231 of the 1972 Act (viz. section 286) was included in the 1933 Act as originally enacted. The equivalents to sections 233 and 234 of the 1972 Act (viz. sections 287A and 287B) were inserted into the 1933 Act by section 8 of, and schedule 4 to, the London Government Act 1963, having previously been applied in relation to London by sections 183 and 184 of the London Government Act 1939. It is worth quoting section 287B of the 1933 Act, which read:

> "(1) Any notice, order or other document which a local authority are authorised or required by or under any enactment (including any enactment in this Act) to give, make or issue may be signed on behalf of the authority by the clerk of the authority or by any other officer of the authority authorised by the authority in writing to sign documents of the particular kind or the particular document, as the case may be.
>
> (2) Any document purporting to bear the signature of the clerk of the authority or of any officer stated therein to be duly authorised by the authority to sign such a document or the particular document, as the case may be, shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority. In this subsection the word 'signature' includes a facsimile of a signature by whatever process reproduced.

> (3) Where any enactment or instrument made under an enactment makes, in relation to any document or class of documents, provision with respect to the matters dealt with by one of the two foregoing subsections, that subsection shall not apply in relation to that document or class of documents."

Does section 233 of the 1972 Act apply in relation to notices under section 83ZA of the 1985 Act?

The parties' cases in outline

14. Mr Jonathan Manning, who appeared for the Council, submitted that the language of section 233 of the 1972 Act is clear and wide. The section applies in relation to *any* notice, order or other document required *or authorised* by or under *any* enactment to be given to or served on *any* person by or on behalf of a local authority. A notice under section 83ZA of the 1985 Act, Mr Manning argued, fits that description and so section 233 is applicable. *Enfield London Borough Council v Devonish* (1997) 29 HLR 691 ("*Devonish*", discussed below), Mr Manning said, does not provide authority to the contrary and, even supposing that it is relevant to ask what function a local authority is performing when it serves a notice, the 1985 Act gives local authorities duties and powers as regards the provision of housing accommodation. Thus, section 8 of the 1985 Act requires every local housing authority to "consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation", section 9 empowers an authority to provide housing accommodation, section 17 empowers an authority to acquire land for housing purposes and section 21 provides for "[t]he general management, regulation and control of a local housing authority's houses [to be] vested in and … exercised by the authority".

15. In contrast, Mr Richard Drabble KC, who appeared for Mr Bravington with Mr Tom Royston, contended that section 233 of the 1972 Act is in point only where a local authority is acting "qua local authority" or, expressing matters slightly differently, exercising a public law function. The provision bites where a local authority is acting "qua local authority" as opposed to performing a function which could be discharged by somebody other than a local authority. A local authority can therefore invoke the section in connection with the service of, say, an enforcement notice in respect of a breach of planning control or a demand notice for rates, but not a notice under the Party Wall etc. Act 1996. Likewise, Mr Drabble argued, section 233 does not apply to notices served in the context of a landlord-and-tenant relationship. That conclusion, Mr Drabble said, is both right as a matter of principle and settled by *Devonish*, which provides binding authority. If that means that a local authority cannot serve a notice under section 83 or 83ZA of the 1985 Act by post, that does not matter: the local authority will be in no worse a position than other landlords.

Authorities

16. We were referred to two cases in which issues arose as to whether a local authority could rely on section 233 of the 1972 Act in a landlord-and-tenant context: *Devonish* and *London Borough of Southwark v Akhtar* [2017] UKUT 150 (LC), [2017] L&TR 36 ("*Akhtar*"). In *Devonish*, the claimant council's estate officer left a notice to quit at

a flat owned by the council of which the first defendant had a tenancy. The notice to quit was addressed to the first defendant, but the council was aware that he was no longer living there. The council subsequently brought possession proceedings, but an occupier who had moved into the flat when the first defendant was still there contended that the notice to quit had not been validly served. The council relied on section 196 of the Law of Property Act 1925 and section 233 of the 1972 Act in seeking to show that there had been effective service. The Court of Appeal, however, concluded that neither statutory provision was in point. With regard to section 233, Kennedy LJ, with whom Potter LJ agreed, said this at 698:

> "Mr Maguire, for the council, points out that when the agent of the council purported to serve the notice to quit that was something which the council, as a local authority, was empowered to do by section 111 of the 1972 Act which, so far as relevant, provides that:
>
> > '… a local authority shall have power to do anything …… which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.'
>
> One of the functions of a local authority is, of course, to manage its housing stock ….
>
> In my judgment section 233 cannot assist the council in this case because the notice to quit was not required or authorised to be given 'by or under any enactment'. It was required to be given at common law by the landlord if the tenancy was to be determined, and it is of no consequence that because the council happens to be a local authority they are therefore a creature of statute authorised by statute to act, *inter alia* as landlords. Many statutes and statutory instruments do specifically require or authorise a local authority, or one of its officers to give some form of notice, and in my judgment section 233 is intended to assist local authorities to give notice in such cases, but not to relieve a local authority of obligations which fall on every other landlord, including, for example, a housing association. Indeed, if the council's arguments be right they could place a local authority in an advantageous position in relation to many ordinary commercial activities undertaken by local authorities, such as exercising an option to purchase or issuing a certificate in relation to a building contract, and I find it difficult to believe that section 233 was ever intended to have such a wide-ranging effect. I do not wish to attach too much weight to textual criticism, but if the intention were as wide as Mr Maguire suggests I can see no reason for including the words 'by or under any enactment' in section 233(1). Mr Maguire submits that those words do exclude for example building contract certificates from the ambit of section 233, but if his principal argument be right, I do not see why there should be that exclusion."

17. *Akhtar* related in part to whether notices which the appellant council had sent to the respondent tenants had been validly served. The council's aim had been to ensure that the respondents were "notified in writing" of certain service charge costs in accordance with section 20B of the 1985 Act. Judge Elizabeth Cooke, sitting as a Judge of the Upper Tribunal (Lands Chamber), found for other reasons that the presumption of service for which section 7 of the Interpretation Act 1978 provides was engaged, but explained in paragraph 71 that she would nevertheless "deal briefly" with, among others, an argument founded on section 233 of the 1972 Act. In that connection, Judge Cooke said this:

> "72. First, the appellant refers to s.233 of the Local Government Act 1972, which authorises service by post of any notice 'required or authorised by or under any notice order or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.'
>
> 73. The appellant is a local authority. Does s.233 therefore authorise it to serve any notice, in any context, by post (and thereby also give it the benefit of s.7 of the Interpretation Act 1978), or does s.233 refer only to notices given by a local authority in its capacity as a local authority? The appellant says the section means what it says and gives local authorities a specific postal service right.
>
> 74. The first respondent says not. She refers to *Enfield LBC v Devonish* … , where it was held that a local authority could not rely on s.233 when serving a notice to quit. Kennedy LJ explained at 689 that s.233 was inapplicable because a notice to quit is required by the common law, as a condition of determining the tenancy, and was not 'required or authorised by any enactment'. Accordingly the appellant says that the ratio of *Enfield* was much more limited. Certainly *Enfield* does not say that s.233 is applicable only where an enactment requires or authorises service by a local authority in its capacity as a local authority. But it seems to me that that is the obvious and natural reading of the provision. Something more explicit would be required if the section were to give all local authorities a blanket authority to serve any notice at all by post."

18. It is also, perhaps, worth mentioning *Greater London Council v Connolly* [1970] 2 QB 100 ("*Connolly*"), where section 287B(2) of the 1933 Act was applied in relation to notices to quit which the Greater London Council had served on some of its tenants. Lord Denning MR said at 109:

> "It is said that the notices to quit were not duly authorised. There is a short answer to this point. The notices were duly signed by the Director of Housing. Under the Local Government Act, 1933, s.287B (2) (see the London Government Act, 1963, s. 8 (2) and Sch. 4, para. 39):

> 'Any document purporting to bear the signature of the clerk of the authority or of any officer stated therein to be duly authorised by the authority to sign such a document or the particular document, as the case may be, shall be deemed, until the contrary is proved, to have been duly given, made or issued by the authority of the local authority ....'
>
> There is, therefore, a presumption of validity and of due authority in favour of the notice to quit. and the presumption was not rebutted."

Assessment

19. In my view, section 233 of the 1972 Act does apply in relation to the service by a local authority of a notice under section 83ZA of the 1985 Act.

20. In the first place, and most importantly, it seems to me that, read naturally, the language of section 233 of the 1972 Act suggests that the provision applies to *any* notice, order or other document which a local authority gives to or serves on any person where that is required or authorised by or under *any* enactment unless (a) the document is one to be given or served in Court proceedings (see section 233(9)) or (b) a provision of an enactment or instrument excludes section 233 (see section 233(10)). Section 233 does not on its face limit its application to circumstances in which a local authority might be said to be acting "qua local authority" or exercising a public law function.

21. Secondly, it is not apparent that holding section 233 of the 1972 Act to apply generally to notices and other documents which are required or authorised under enactments, and not merely where a local authority is acting "qua local authority" or exercising a public law function, would give rise to unsatisfactory consequences which Parliament would not have intended. Mr Drabble pointed out that, if section 233 were held to be applicable as regards the service of notices under sections 83 and 83ZA of the 1985 Act, local authorities would be in a better position than other landlords. In particular, a local authority could avail itself of section 233 even though (a) entities other than local authorities can potentially be landlords in respect of secure tenancies and so wish to serve notices under section 83 and 83ZA and (b) by section 8 of the Housing Act 1988, landlords of premises let on assured tenancies (who cannot be local authorities but include, for example, housing associations) are similarly obliged to serve a notice in advance of possession proceedings. However, there is no necessity to treat all landlords in the same way as regards service requirements. As Mr Manning noted, local authority and other landlords are not competitors in a market.

22. Thirdly, there are other provisions in Part XI of the 1972 Act which do not appear to depend for their application on the capacity in which a local authority acts. In *Connolly*, the provision in the 1933 Act corresponding to section 234(2) of the 1972 Act was applied even in relation to notices to quit. More significantly, perhaps, section 234(1) allows "[a]ny notice, order or other document which a local authority are authorised or required by or under any enactment … to give, make or issue" to be signed on behalf of the authority by the proper officer of the authority. There is no evident reason why Parliament should have wished this subsection or its predecessor

in the 1933 Act to be in point only where a local authority acts "qua local authority" or exercises a public law function, and much the same wording was subsequently used, first, in section 183 of the London Government Act 1939 ("any notice, order or other document required or authorised by this Act, or by any other enactment or statutory order, to be served by or on behalf of a local authority, or by an officer of a local authority, on any person"), next, in section 287A of the London Government Act 1963 ("any notice, order or other document which is required or authorised by any enactment or any instrument made under an enactment to be served by or on behalf of a local authority, or by an officer of a local authority") and, finally, in their successor, section 233 of the 1972 Act ("any notice, order or other document required or authorised by or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority"). If what is now section 234(1) of the 1972 Act applies wherever a local authority gives any notice which is "authorised or required by or under any enactment", regardless of whether it is doing so "qua local authority" or in exercise of a public law function, section 233 could be expected to have similar scope. Further, were section 233 confined to situations where a local authority is acting "qua local authority" or exercising public law functions, section 231, which uses similar language ("any notice, order or other document required or authorised by any enactment or any instrument made under an enactment to be given to or served on a local authority or the chairman or an officer of a local authority") in addressing service *on* local authorities, would presumably be limited in the same way, yet there is no obvious reason for Parliament to have intended that.

23. Fourthly, there could be considerable debate as to whether in a particular context a local authority was acting "qua local authority" or exercising public law functions. Take the present case. Plainly, Parliament has given local authorities powers and duties in connection with the provision of housing. That being so, it is by no means evident that a local authority is not acting "qua local authority" if it, say, reviews rents in accordance with section 24 of the 1985 Act, serves a preliminary notice under section 103 of the 1985 Act in advance of varying the terms of its tenants' tenancies under section 102 of the 1985 Act or (as in this case) serves a notice under section 83ZA of the 1985 Act. The Courts have grappled with comparable issues when deciding whether a contention has to be advanced by way of judicial review rather than in ordinary civil proceedings (see e.g. *Wandsworth Borough Council v Winder* [1985] AC 461 and *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988) and when considering whether a defendant is a "public authority" within the meaning of the Human Rights Act 1998 (see e.g. *R (Weaver) v London and Quadrant Housing Trust* [2009] EWCA Civ 587, [2010] PTSR 1). It seems unlikely that Parliament intended the application of section 233 of the 1972 Act (or that of section 231 or section 234) to turn on a distinction which could generate such dispute. Certainty is clearly desirable in the context of provisions dealing with service and authentication, as sections 231, 233 and 234 do.

24. Fifthly, I do not accept that *Devonish* is authority for the proposition that, for section 233 of the 1972 Act to apply, a local authority must be acting "qua local authority" or exercising a public law function. Mr Drabble focused on the sentence in Kennedy LJ's judgment in which he said that "[m]any statutes and statutory instruments do specifically require or authorise a local authority, or one of its officers to give some kind of notice, and in my judgment section 233 is intended to assist local authorities

to give notice in such cases, but not to relieve a local authority of obligations which fall on every other landlord, including, for example, a housing association". The question in *Devonish*, however, was not whether a local authority had to be acting "qua local authority" for section 233 to be applicable, but whether the section applied in relation to an ordinary notice to quit for which there was no particular statutory provision. Answering that in the negative, Kennedy LJ said that section 233 could not assist the council "because the notice to quit was not required or authorised to be given 'by or under any enactment'", but "required to be given at common law by the landlord if the tenancy was to be determined". Following the passage stressed by Mr Drabble, moreover, Kennedy LJ observed that the council's arguments "could place a local authority in an advantageous position in relation to many ordinary commercial activities undertaken by local authorities, such as exercising an option to purchase or issuing a certificate in relation to a building contract". Once again, it is apparent that Kennedy LJ was dismissing the idea that a local authority could use section 233 in relation to notices which were not required or authorised to be given "by or under any *enactment*" (emphasis added). In the circumstances, I do not think *Devonish* lends any significant support to Mr Bravington's case.

25. Finally, Judge Cooke's comments in paragraph 74 of *Akhtar* were obiter, made in circumstances in which Judge Cooke had said that she would "deal briefly" with section 233 of the 1972 Act, and would not be binding on this Court even if they had been ratio, which they were not.

Were the requirements of section 233 of the 1972 Act met?

26. So far as relevant, section 233(2) of the 1972 Act states that a notice "may be … served on the person in question … by leaving it at his proper address". By virtue of section 233(4), "the proper address of any person … on whom a document is to be … served shall be his last known address".

27. In the present case, as I have said, a certificate of service explains that service was effected at 9 Clunbury Road by handing the letter containing the Notice to "Shazana Ellis (girlfriend of D. Bravington)". Further detail is provided in a witness statement made by PC Paul Reynolds dated 6 January 2021. PC Reynolds said:

> "This statement is to confirm that on the 3rd January 2020 in company with PC 0407 Brooke I attended 9 CLUNBURY ROAD, Northfield. I attended this address to serve a letter of possession proceedings on absolute grounds. [T]his was on behalf of Birmingham City Council.
>
> On attending the address I knocked on the door and a female answered the door, she stated that she was the partner of Drew Bravington and accepted the letter. On asking her name she identified herself as TAJHARNA ELLIS. This was captured on my body worn camera."

28. The question which arises is whether giving the Notice to Ms Ellis satisfied the requirements of section 233 of the 1972 Act. There is no doubt that 9 Clunbury Road was Mr Bravington's "proper address" for the purposes of section 233. Did, though,

giving Mr Bravington's partner the Notice in the way described amount to "leaving" it at 9 Clunbury Road?

29. Mr Manning relied in this connection on *Lord Newborough v Jones* [1975] 1 Ch 90. The issue there was whether a notice to quit had been served in accordance with section 92 of the Agricultural Holdings Act 1948, which provided:

> "Any notice... under this Act shall be duly given to or served on the person to or on whom it is to be given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter."

The landlord, having obtained no answer when he knocked, had slipped the envelope containing the notice under the bottom of the door which the tenant and his family mostly used. The tenant and his wife gave evidence to the effect that the envelope had gone under some linoleum which was on the other side of the door and then lain there undiscovered for some months. The Court of Appeal held that, even supposing that to be correct, there had been good service. Russell LJ, with whom Stamp and Scarman LJJ agreed, said at 94:

> "I have formed the view that, the subject matter being a notice, it is implicit in the provisions of section 92 that, if served by leaving at the proper address of the person to be served, it must be left there in a proper way; that is to say, in a manner which a reasonable person, minded to bring the document to the attention of the person to whom the notice is addressed, would adopt. This is, to my mind, the only qualification (or gloss, if you please) proper to be placed on the express language of the statutory provision.
>
> In the present case it is quite impossible to say that the action of the landlord in putting the notice under the door was other than leaving it at the proper address in a manner which a reasonable person, minded to bring the document to the attention of the tenant, would adopt. Consequently, it appears to me that the landlord's contention is right and, subject to one point, it would be idle to order a new trial because the landlord must win. Accordingly, on the section 92 point, I am of opinion that the case for the landlord is made out."

30. For his part, Mr Drabble referred us to *R v Bromley London Borough Council, ex p Sievers* (1980) P&CR 294 ("*Sievers*"). In that case, an application for approval of a planning matter was due to be made by 23 January, but, that date being a Sunday, the application was handed to an official at the town hall on Monday 24 January. Invoking section 231 of the 1972 Act, the council contended that the application could have been "left" at the town hall on the Sunday by dropping it into the letter box there. The Divisional Court disagreed, however. Shaw LJ, with whom Kilner Brown J agreed, said at 298:

> "Now, if section 231 applies, it offers a choice of methods of 'giving' documents to a local authority. Apart from sending

> them by post, they can be 'left at' the principal office. This cannot mean simply depositing the documents on the doorstep. Like 'lodging' them, it must, in practical terms, involve leaving them with a responsible officer or employee of the authority. If the sender chooses the method of 'leaving' that is authorised as an alternative to posting by section 231 of the Act of 1972 (and he is entitled to adopt this method if he is so minded), he cannot, in my view, be penalised or regarded as in default if he 'leaves' the documents on the next following day that the offices are open. The present applicants had until January 23 to 'leave' the application for approval of any reserved matters. On that day, they could not leave them with anybody there. Dropping them in the letter-box is not 'leaving' the documents any more than dropping them on the doorstep or the forecourt would be. So the Sunday did not count any more than the Saturday would have done."

31. *Lord Newborough v Jones* does not appear to have been cited in *Sievers*. In any event, since *Sievers* was a decision of the Divisional Court, it is not binding on us and, for my part, I cannot see why dropping a document in an appropriate letter box should not constitute "leav[ing]" it at the relevant address for the purposes of either section 231 or section 233 of the 1972 Act. In fact, Mr Drabble's skeleton argument suggested that "leaving it at his proper address" "must mean either *putting it in a place designated by the occupier of the land for a letter (eg a post box)*, or affixing it to something so it could be seen, or giving it to a person living or employed at the property" (emphasis added) and so was proceeding on the basis that putting a document in a letter box *could* amount to "leav[ing]" it. In any case, it seems to me that the correct test is that adopted in *Lord Newborough v Jones*: just as was held to be the case for the purposes of section 92 of the Agricultural Holdings Act 1948, in my view a document will be "left" at an address for the purposes of section 231 or section 233 of the 1972 Act if it was left there "in a manner which a reasonable person, minded to bring the document to the attention of the person to whom the notice was addressed, would adopt".

32. Was, then, the Notice left at 9 Clunbury Road "in a manner which a reasonable person, minded to bring the document to the attention of the person to whom the notice was addressed, would adopt"? It appears to me that it was. The Notice was handed to a person within the property who identified herself as the partner of Mr Bravington and accepted the letter. That, I think, was conduct which a reasonable person minded to bring the Notice to Mr Bravington's attention would have adopted.

Consequences

33. If, as I have concluded thus far, section 233 of the 1972 Act applied in relation to the service of the Notice on Mr Bravington and the requirements of that provision were met, does it necessarily follow that the Notice was duly served? Or can Mr Bravington nonetheless dispute service on the basis that the document did not in fact reach him?

34. Mr Drabble argued that "[a]t common law service requires receipt of the document" (see *Knight v Goulandris* [2018] EWCA Civ 237, [2018] 1 WLR 3345, at paragraph

19, per Patten LJ) and that, while section 233 of the 1972 Act prescribes certain mechanisms of service, it does not detract from the common law rule. Mr Manning, on the other hand, contended that proof that a document was "left" at the "proper address" in accordance with section 233 is conclusive and that it does not matter whether it actually came to the addressee's attention.

35. Mr Manning took us to *Rushmoor Borough Council v Reynolds* (1991) 23 HLR 495 ("*Reynolds*"). In that case, a notice addressed to the respondent had been pushed through the letter box at the house at which he lived. The property was, however, in multiple occupation, and the respondent did not receive it. The Divisional Court nevertheless held that service had been duly effected in accordance with section 233 of the 1972 Act. Watkins LJ, with whom French J agreed, said at 498:

> "[Counsel for the appellant council], in my view, correctly contends that the only matter which could be contested, as is clear from section 7 [of the Interpretation Act 1978], by the respondent in this case had the notice been sent by post was the time at which the document was actually delivered at his premises. Otherwise, he asserts that whether the method chosen by the appellant was sending the document through the post or, as was done, by causing a servant or agent to deliver it through the letter-box, the presumption is the same by dint of sections 233 and 7, namely that service has been effected and cannot be denied; in other words, it is an irrebuttable presumption and nothing can be said to the contrary.
>
> I agree with that and so would allow this appeal."

36. Mr Manning placed reliance, too, on section 233(7) of the 1972 Act. Among other things, that states that a document "may be … served … by leaving it conspicuously affixed to some building or object on the land" if "the name or address of any owner, lessee or occupier of land to or on whom any document mentioned in subsection (1) above is to be given or served cannot after reasonable inquiry be ascertained". As Mr Manning said, this provision would make little sense if effective service depended on receipt. For section 233(7) to be in point at all, it must have proved impossible to ascertain the name or address of the relevant person after reasonable inquiry. In such circumstances, the document might not come to the attention of the intended addressee for a substantial time, if at all. The obvious inference, as it seems to me, is that section 233(7) was intended to allow a local authority to achieve service regardless of whether the addressee receives, or even learns of, a document.

37. It is also helpful, I think, to refer to authorities concerned with section 23 of the Landlord and Tenant Act 1927 ("the 1927 Act"), which section 233 of the 1972 Act closely resembles. Section 23(1) of the 1927 Act provides:

> "Any notice, request, demand or other instrument under this Act shall be in writing and may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode in England or Wales, or by sending it through the post in a registered letter addressed to him there, or, in the case of a local or public authority or a

> statutory or a public utility company, to the secretary or other proper officer at the principal office of such authority or company ….”

38. In *Chiswell v Griffon Land and Estates Ltd* [1975] 1 WLR 1181, Megaw LJ said this at 1188-1189 about section 23 of the 1927 Act:

> “It is provided, as what I may call at any rate the primary means of effecting service, that it is to be done either by ‘personal’ service or by leaving the notice at the last-known place of abode, or by sending it through the post in a registered letter, or … in a recorded delivery letter. If any of those methods are adopted, they being the primary methods laid down, and, in the event of dispute, it is proved that one of those methods has been adopted, then sufficient service is proved. Thus, if it is proved, in the event of dispute, that a notice was sent by recorded delivery, it does not matter that that recorded delivery letter may not have been received by the intended recipient. It does not matter, even if it were to be clearly established that it had gone astray in the post.”

39. In a passage quoted with approval by Lord Carnwath in *UKI (Kingsway) v Westminster City Council* [2018] UKSC 67, [2019] 1 WLR 104, at paragraph 16, Slade LJ said of section 23 of the 1927 Act in *Galinski v McHugh* (1988) 57 P&CR 359, at 365:

> “the object of its inclusion in the 1927 Act … is not to protect the person upon whom the right to receive the notice is conferred by other statutory provisions. On the contrary, section 23(1) is intended to assist the person who is obliged to serve the notice, by offering him choices of mode of service which will be deemed to be valid service, even if in the event the intended recipient does not in fact receive it.”

40. In *Blunden v Frogmore Investments Ltd* [2003] 2 P&CR 6, Robert Walker LJ said at paragraph 28 of provisions such as section 23 of the 1927 Act:

> “I accept that one of the purposes of these provisions is to establish a fair allocation of the risks of any failure of communication. The other main purpose is to avoid disputes on issues of fact (especially as to whether a letter went astray in the post or was accidentally lost, destroyed or overlooked after delivery to the premises of the intended recipient) where the true facts are likely to be unknown to the person giving the notice, and difficult for the court to ascertain.”

41. In all the circumstances, I agree with Mr Manning that it is irrelevant when Mr Bravington became aware of the Notice. Like section 23 of the 1927 Act, section 233 of the 1972 Act is, in my view, designed to allocate the risks of a failure of communication and “to avoid disputes on issues of fact … where the true facts are likely to be unknown to the person giving the notice, and difficult for the court to

ascertain". To adapt Slade LJ's words, section 233 offers a local authority "choices of mode of service which will be deemed to be valid service, even if in the event the intended recipient does not in fact receive [the notice]". It follows that, the Notice having been "left" at 9 Clunbury Road in such a way as to comply with section 233, it was duly served.

Conclusion

42. I would allow the Council's appeal, dismiss Mr Bravington's application for summary judgment and declare that the Notice was duly served on Mr Bravington.

Lord Justice Arnold:

43. I agree. I would only add that in *R v Bromley London Borough Council, ex p Sievers* (1980) P&CR 294 Shaw LJ said at 298, immediately after the passage quoted by Newey LJ in paragraph 30 above:

> "Making allowances for the state of affairs at the town hall on the Sunday, I would hold that Monday, January 24, was 'not earlier than the expiration of three years beginning with the date of the grant of the outline planning permission' on January 24, 1974."

44. Thus Shaw LJ seems to have regarded it as significant that, because the town hall was closed on the Sunday, leaving the application in the letter box on that date would not have brought it to the council's attention any earlier than handing it to a council employee on the Monday had actually done. That is a point about the timing of service rather than the effectiveness of service.

Lord Justice Moylan:

45. I agree that the appeal should be allowed as proposed by Newey LJ for the reasons he gives.