Neutral Citation Number: [2024] EWHC 1212 (Admin)

Case No: AC-2023-LON-003429

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Tuesday, 21st May 2024

Before:
FORDHAM J

- -

Between:

LONDON BOROUGH OF BARKING AND DAGENHAM	**Appellant**
- and -	
ZANNAT ARA AZIZ	**Respondent**

- -

- -

Nick Ham (instructed by Legal Services, LBBD) for the **Appellant**
Katherine Higgs (instructed by Ashtons Legal LLP) for the **Respondent**

- -

Hearing date: 30.4.24
Draft judgment: 8.5.24

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

- -

FORDHAM J

FORDHAM J:

Introduction

1. This case is about a planning enforcement prosecution against a defendant who says they were not served with the enforcement notice and were genuinely unaware of its existence. When, in law, can such a person be acquitted? The governing statute is the Town and Country Planning Act 1990. I will have to consider the legally correct meaning of, and the interrelationship between, three aspects of the 1990 Act. I have labelled them. They are: (i) the "Statutory Appeal Grounds" in s.174(2); (ii) the "Statutory Defence" in s.179(7); and (iii) the "Statutory Disapplication" in s.285(2).
See §§9-22 below. The Statutory Appeal Grounds include provision (ss.174(2)(e) and 176(5)) about a person unserved with the enforcement notice but aware of its existence in time (so as to appeal). The Statutory Defence (s.179(7)) and Statutory Disapplication (s.285(2)) each specifically address the position of a person never served with the enforcement notice and were genuinely unaware of its existence. How do these fit together?

2. The case comes before me as a case stated appeal from the North East London Magistrates, who acquitted the Respondent on 18 July 2023, applying the Statutory Disapplication. The Appellant was the prosecutor. The enforcement notice was dated 9 April 2019 and required compliance by 9 August 2019. This was the charge:

> ***Between 10 August 2019 and 9 February 2023, Zannat Ara Aziz, being the owner of land, namely 62 Westbury Road, Barking IG11 7PQ, to which a planning enforcement notice dated 9 April 2019 relates, after the period for compliance with that enforcement notice, namely 9***
>
> ***August 2019, failed to take steps required by the notice to be taken, and carried on activities required by the notice to cease, in that she continued to use the land as a house in multiple occupation and did not remove all alterations and fixtures enabling the conversion to a house of multiple occupation [HMO]; Contrary to Section 179(2) of the 1990 Act.***

I have to answer three Questions posed by the Magistrates (§52 below) and decide, by reference to those questions and the three Appellant's Grounds of Appeal (§53 below), whether the Magistrates' decision to acquit the Respondent was wrong in law.

"Newcomers" and "Non-Newcomers"

3. In this judgment, I am going to refer to "Newcomers" and "Non-Newcomers". Both of these can commit criminal offences of non-compliance with an enforcement notice (s.179(1)-(2), (4)-(5)). By "Newcomer", I mean a person whose relevant interest in the land has arisen after the enforcement notice, and who could not have been served within 28 days as statutorily-required (s.172(2)). By "Non-Newcomer", I mean a person whose relevant interest in the land already existed prior to the enforcement notice; and who could have been served within 28 days as statutorily-required (s.172(2)), but who may not have been. In each case, they could be "the owner"
(s.179(1)) or a person "who has control of or an interest in the land" (s.179(4)). A NonNewcomer is a person who "has held an interest in the land since before the enforcement notice was issued" (s.285(2)).

Unserved

4. The statutory scheme speaks in several places about a person not being served with the enforcement notice. Enforcement notices are required, within 28 days of their issue

(s.172(3)(a)), to be served on the land owner, the land occupier and any person with a materially affected land interest (s.172(2)). Mode of service is governed by s.329 (in Part 15). Statutorily-compliant service is service in accordance with s.172 (also described as service under Part 7). It means service within 28 days of issue of the enforcement notice and not less than 28 days before the specified date on which the enforcement notice takes effect (s.172(3)). Sometimes the statute speaks of whether the enforcement notice was not served as statutorily-required (s.174(2)(e)). That could be because: (1) as the s.174 appellant or s.179 defendant, I was an unserved NonNewcomer; or (2) as the s.174 appellant or s.179 defendant, I was a Non-Newcomer served too late after issue or too soon before the date of taking effect; or (3) I can point to someone else of whom that is true (see s.176(5)). Sometimes the statute speaks about whether a s.179 defendant was not served (s.179(7)) or was not served as statutorilyrequired (s.285(2)).

The 1971 Act

5. In this judgment, I am going to make regular references to a repealed Act: the Town and Country Planning Act 1971. Here is the reason why. The strong starting point is that the provisions of the 1990 Act are to be interpreted as a straightforward, standalone statutory code. That correct legal interpretation should not require an exercise in statutory archaeology. But some of the relevant authorities, including those to which Counsel and the Magistrates referred, are cases on the 1971 Act. Those cases discuss the predecessor (1971 Act s.243(2)) to the Statutory Disapplication. Beyond that – approached with caution – understanding the statutory history can have its place, as a secondary consideration offering reinforcement or illumination.

Key Findings

6. The Magistrates made these Key Findings (the numbering is mine):

(F1) ***The Respondent was the pre-existing owner of the land (a Non-Newcomer).***

(F2) ***The enforcement notice was on the statutory (1990 Act s.188) register.***

(F3) ***The enforcement notice was not served on the Respondent.***

(F4) ***The Respondent did not know that the enforcement notice had been issued.***

(F5) ***The Respondent could not reasonably have been expected to know that the enforcement notice had been issued.***

(F6) ***The Respondent's interests were substantially prejudiced by the failure to serve her with a copy of the enforcement notice.***

7. In the light of these Key Findings, the Magistrates found that: (a) the requirements of the Statutory Disapplication were satisfied; (b) the enforcement notice was not "valid"; and (c) the alleged s.179 breach could not be found.

8. This reasoning is what is challenged by the three Grounds of Appeal. The Appellant says, for a number of reasons, that the Magistrates went wrong in law. In the course of the arguments, only one of these six Key Findings is being impugned. The Appellant

says that, in the light of Key Finding (F2), Key Finding (F5) was: (i) wrong in law; or (ii) a legally unreasonable conclusion given the factual position at and after 29 August 2022. See §§32-38 below.

The Statutory Appeal Grounds

9. I have said there are three features of the Act to analyse. This is the first. Part 7 of the 1990 Act is headed "Enforcement". Within Part 7, a relevant occupier or person with an interest in the relevant land is entitled (s.174(1)), to bring a suspensive appeal (s.175(4)) to the Secretary of State. The appeal must be brought before the date specified in the enforcement notice as the date on which it takes effect (s.174(3)(a)), which means a minimum 28 day window to appeal (s.172(3)). The planning inspector, acting for the Secretary of State: may allow the appeal and quash the enforcement notice (s.176(2)); or, if satisfied that this will not cause injustice, may correct a defect, error or misdescription or vary the terms of the enforcement notice (s.176(1)); or may dismiss the appeal.

10. Here are the Statutory Appeal Grounds (s.174(2)):

> ***(2) An appeal may be brought on any of the following grounds – (a) that, in respect of anybreach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; (b) that those matters have not occurred; (c) that those matters (if they occurred) do not constitute a breach of planning control; (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters; (e) that copies of the enforcement notice were not served as required by s.172; (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 s.173(9) falls short of what should reasonably be allowed.***

There were equivalent grounds of appeal in s.88 of the 1971 Act (discussed in R v Collett [1994] 1 WLR 475 at 480F-G). Before that, there had been a 1947 right of appeal to the magistrates, replaced in 1960 with a right of appeal to the minister (see R v Wicks [1998] AC 92 at 119C-G).

11. One of the Statutory Appeal Grounds is that copies of the enforcement notice "were not served as required by s.172" (s.174(2)(e)). This was s.88(1)(e) of the 1971 Act. The appellant could be someone, aware of the enforcement notice, who had not been served: Parliament spelled out that a relevant person can appeal against an enforcement notice (s.174(1)) "whether or not it has been served on him". Or the appellant could be someone, served with the enforcement notice, but saying that it should have been served on someone else. It could be someone saying the notice had been served, but served too late after issue or too close to the date it came into effect. The service of the enforcement notice which is "required by s.172" is governed by s.172(2)(3), which provide as follows:

> ***(2) A copy of an enforcement notice shall be served – (a) on the owner and on the occupier ofthe land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. (3) The service of the notice shall take place – (a) not more than twenty-eight days after its date of issue; and (b) not less than twenty-eight days before the date specified in it as the date on which it is to take effect.***

Mode of service is governed by s.329. An enforcement notice would not be "served as required by s.172" if it were unserved on a person required to be served (s.172(1)); or if it was served on such a person too late after issue or too close to the specified date of it taking effect (s.172(3)).

12. A s.174(2)(e) appeal – that the enforcement notice was not "served as required by s.172" – can be refused by the inspector if the failure to serve was non-prejudicial. That is by virtue of s.176(5) – which was s.88(4)(b) of the 1971 Act – which provides:

> ***Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.***

13. The following points can be made about the s.174(2)(e) appeal. (1) This Statutory Appeal Ground is a provision involving a procedure brought by an appellant under s.174. (2) The appellant will almost certainly be a Non-Newcomer (ie. able to appeal before the date on which the enforcement notice was specified to come into effect). (3) The Statutory Appeal Ground involves the absence of statutorily-compliant service of the enforcement notice, on the appellant or on another person. (4) The Statutory Ground of Appeal entails awareness of the enforcement notice by the appellant (to be able to appeal within 28 days of issue). (5) Substantial prejudice is required by the Statutory Appeal Ground. (6) It is irrelevant to the Statutory Appeal Ground that the enforcement notice was or was not registered on the s.188 register. (7) There is no excusability requirement (about what the defendant could or could not reasonably have been expected to know).

14. I think we can encapsulate the s.174(2)(e) Statutory Appeal Ground, sufficiently for the present case, as follows:

> *The s.174(2)(e) Statutory Appeal Ground Encapsulated: An enforcement notice can be quashed on appeal, where a prejudicially-affected appellant is aware of its existence, but they (or another prejudicially-affected person) were unserved as statutorily-required.*

The words "prejudicially-affected" are shorthand for substantially prejudiced by the failure to serve them (s.176(5)).

The Statutory Defence

15. Also within Part 7 (Enforcement), s.179 is headed "Offence where enforcement notice not complied with". There are two non-compliance offences in s.179. Each attracts a fine (s.179(8)). Each is committed after the time for compliance in the enforcement notice has ended (s.179(1)(5)). Each can be committed on "any day or longer period of time" (s.179(6)). The first offence (s.179(2)) is committed by the then owner of the land, by being in breach of the enforcement notice, because a relevant required step has not been taken or a relevant activity is still being carried on (s.179(1)). It is a defence for the landowner to show that "he did everything he could be expected to do to secure compliance" (s.179(3)). The second offence (s.179(5)) is committed by a non-owner, but who has control of the land or an interest in it, who carries on or causes or permits any relevant activity (s.179(4)). There were similar offences in ss.89(1) and (5) of the 1971 Act.

16. Here is the Statutory Defence (s.179(7)):

> ***Where – (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice; and (b) the notice is not contained in the appropriate register kept under s.188, it shall be a defence for him to show that he was not aware of the existence of the notice.***

The Statutory Defence did not appear in the 1971 Act; nor in the 1990 Act as originally enacted. It was introduced by s.8 of the Planning and Compensation Act 1991, with effect from 2 January 1992 (SI 1991 No. 2905). The Statutory Appeal Grounds and Statutory Disapplication were present throughout.

17. The following points can be made about the Statutory Defence. (1) The Statutory Defence is a provision addressing the position in proceedings brought against a defendant under s.179. (2) The defendant may be a Newcomer or a Non-Newcomer. (3) The Statutory Defence involves non-service of the enforcement notice on the defendant (whether because they are a Non-Newcomer who was not served as statutorilyrequired, or as a Newcomer who would not have been served). (4) The Statutory Defence involves genuine unawareness of the enforcement notice by the defendant. (5) Substantial prejudice is not required by the Statutory Defence. (6) It is expressly fatal to the Statutory Defence if the enforcement notice was registered on the s.188 register. (7) There is no separate excusability requirement (that the defendant could not reasonably have been expected to know that the enforcement notice had been issued).

18. I think we can encapsulate the Statutory Defence, sufficiently for the present case, as follows:

> *The Statutory Defence Encapsulated: Non-compliance with an unregistered enforcement notice is not a s.179 crime, if the defendant was unserved with it and genuinely unaware of its existence.*

The Statutory Disapplication

19. Part 12 of the 1990 Act is headed "Validity". Within it, s.285 is headed "Validity of enforcement notices and similar notices". Within s.285 there is this "Preclusive Clause" (s.285(1)), which reserves the Statutory Appeal Grounds exclusively to the forum of such an appeal:

> ***the validity of an enforcement notice shall not, except by way of an appeal under Part 7, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.***

20. What follows next is the Statutory Disapplication (s.285(2)). It refers to the Preclusive Clause and says:

> ***Subsection (1) shall not apply to proceedings brought under section 179 . . . against a person who – (a) has held an interest in the land since before the enforcement notice was issued under that Part; (b) did not have a copy of the enforcement notice served on him under that Part; and (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.***

I am using the word "Disapplication" because s.285(2) uses the words "shall notapply", referring to the Preclusive Clause in s.285(1). Unlike the Statutory Defence, these provisions were not new in 1991. Lord Hoffmann traced a partial preclusive clause back to 1960 (Wicks at 119E). The 1971 Act contained the Preclusive Clause at s.243(1) and the Statutory Disapplication at s.243(2).

21. The following points can be made. (1) The Statutory Disapplication is a provision addressing the position in proceedings brought against a defendant under s.179. (2) The

defendant must be a Non-Newcomer. (3) The Statutory Disapplication involves nonservice of the enforcement notice on the defendant (as a Non-Newcomer who was not served as statutorily-required). (4) The Statutory Disapplication involves genuine unawareness of the enforcement notice by the defendant. (5) Substantial prejudice is required by the Statutory Disapplication. (6) It is not expressly fatal to the Statutory Disapplication if the enforcement notice was registered on the s.188 register. (7) There is an excusability requirement (that the defendant could not reasonably have been expected to know that the enforcement notice had been issued).

22. I think we can encapsulate the Statutory Disapplication, sufficiently for the present case, as follows:

> *The Statutory Disapplication Encapsulated: In proceedings alleging a s.179 crime, the validity of an enforcement notice may be questioned on the Statutory Appeal Grounds, by a Non-Newcomer defendant who was prejudicially-unserved with it, and was genuinely and excusably unaware of its existence.*

I have used some shorthand here. Again (see §14 above), the words "prejudicially-unserved" are shorthand for the defendant's interests having been substantially prejudiced by the failure to serve them. The word "excusably" is shorthand for the fact that the defendant could not reasonably have been expected to know that the enforcement notice had been issued.

Encouraging Vigilance: *Collett*

23. It is fatal to the Statutory Defence that the enforcement notice has been registered (s.179(7)(b)). Registration featured in a passage in Collett, which referred to encouraging vigilance. Collett was argued in October 1993. But it arose out of convictions in September 1990 and involved the 1971 Act, in which the Statutory Defence did not appear. Collett was a case about Newcomers. Here is what happened. After issuing and serving an enforcement notice in October 1979 in relation to Springfield Farm in East Sussex, and after unsuccessful appeals in January 1986 brought by those with pre-existing land interests, the enforcement notice stood. In January 1990, the local authority's enforcement officer observed five people engaged in activities at the property (see 479D). Those five Newcomers were prosecuted for noncompliance with the enforcement notice.

24. The defendants said they were genuinely unaware of the enforcement notice, so that they could not have the guilty mind (mens rea) necessary for committing a crime of non-compliance. The Court of Appeal disagreed, explaining (at 485C) that:

> ***it is quite plain that knowledge of the enforcement notice is not an essential part of the offences.***

The Court of Appeal then said this (485D-G), in a passage which I have broken up into three numbered parts for ease of exposition and cross-referencing:

> ***[i] It is also plain from section 243(2) [of the 1981 Act] that the statutory provisions areintended to encourage those who own, occupy or otherwise have interests in land to take all necessary steps to advise themselves of the planning status of land. The subsection only provides a person whose interests have been affected by an enforcement notice an opportunity to challenge its validity if, amongst other things, he "could not reasonably have been expected to know that the enforcement notice had been served."***

> ***[ii] No such opportunity is given to a person whose interest arises after the service of theenforcement notice. Parliament must therefore have intended that the burden of establishing whether or not any use of land is prohibited should be on the person seeking to make use of the land. That obligation must be seen against the background that enforcement notices are registrable as land charges, as was done in the present case; and since the Local Government and Planning (Amendment) Act 1981, every district planning authority is under an obligation to keep a register of enforcement notices, which is to be available for inspection by the public at all reasonable hours.***
>
> ***[iii] These provisions underline our view that the policy of the Act was to impose absoluteliability so as to encourage vigilance on the part of the land owners and users.***

25. The reference in this passage at [i] is to the predecessor of the Statutory Disapplication (s.243(2) of the 1971 Act) and Non-Newcomers. The reference at [ii] to registration, is to a feature which in 1991 became fatal to the Statutory Defence. As has been seen, registration is fatal to the Statutory Defence. A local authority who performs its statutory registration duty can defeat the Statutory Defence, which does not assist a defendant – who has not exercised "vigilance" and checked the register – to say they were unserved by the enforcement notice and genuinely unaware of its existence. The question is: where does that leave the Statutory Disapplication?

A Person Served with an Enforcement Notice: *Wicks*

26. If you are a defendant to a prosecution alleging a s.179 non-compliance offence, but if you are a Non-Newcomer who was served with the enforcement notice as statutorilyrequired (s.172(2)(3)), then neither the Statutory Defence nor the Statutory Disapplication can help you. The s.179(3) defence is available: that you did everything you could be expected to do to secure compliance. So far as the Statutory Appeal Grounds are concerned, you could have mounted an appeal, invoking these. That includes the s.174(2)(e) Statutory Appeal Ground. If you have some other "residual" public law challenge to the enforcement notice, falling outside the Statutory Appeal Grounds, then the route is judicial review. None of this can be raised as a defence. So decided Wicks. However, in explaining that the Statutory Appeal Grounds were unavailable to a defendant facing a prosecution for a s.179 offence, the House of Lords were very careful to say that they were describing the position of such a defendant who was "a person served with the enforcement notice". If you have been "served", then genuine unawareness will not assist you: Goodall v Peak District National Park Authority [2008] EWHC 734 (Admin).

27. Wicks identified the authoritative interpretation of "enforcement notice" in s.179(1) of the 1990 Act. Correctly understood, those words mean "a notice issued by a planning authority which on its face complies with the requirements of the Act and has not been quashed on appeal or by judicial review" (122F). That means, as a matter of statutory construction (117B), that there is no room for a Boddington defence based on contending that the enforcement notice is "ultra vires". There are the "residual grounds" (120B) would require judicial review (122D). They are "residual" because the Preclusive Clause (s.285(1)) means "no challenge is possible on any ground which can form the subject matter of an appeal" (120A-B). There is an identifiable "policy restriction" on the issues which could be raised as a defendant being prosecuted for non-compliance (119G-121F) including "suitability of the subject matter" for the magistrates' court (120A).

28. But this "policy restriction" applies to "a person served with an enforcement notice". This is what Lord Hoffmann said (at 119G, emphasis added):

> ***The history shows that over the years there has been a consistent policy of progressively restricting the kind of issues which a person served with an enforcement notice can raise when he is prosecuted for failing to comply. The reasons for this policy of restriction are clear: they relate, first, to the unsuitability of the subject matter for decision by the criminal court; secondly, to the need for the validity of the notice to be conclusively determined quickly enough to enable planning control to be effective and to allow the timetable for service of such notices in the Act to be operated; and thirdly, to the fact that the criminal proceedings are part of the mechanism for securing the enforcement of planning control in the public interest.***

Lord Hoffmann added this (at 122E, emphasis added):

> ***As Keene J said in the Court of Appeal, the owner has been served with the notice and knows that he has to challenge it or comply with it.***

This careful focus reflects the fact that a different position applies to a person who finds themselves prosecuted for non-compliance with an enforcement notice, but can say that they were not served with it and were genuinely unaware of it.

Disapplication as 'Empowerment'

29. The Statutory Disapplication (s.285(2)) is referable to the Preclusive Clause (s.285(1)). If one statutory provision simply cancels out another, then nothing has changed, and you simply put them both to one side. If the Statutory Disapplication does no more than neutralise the Statutory Preclusion, then it could leave the prosecuted defendant no further back, and no further forward, than they would be if neither of these provisions were on the statute book. We would simply look to s.179 to find the elements of the offence, then look to the s.179(3) defence, and finally look to the Statutory Defence (s.179(7)). But Counsel are agreed in this case that this is not how the Statutory Disapplication works. Instead, it positively 'empowers' the making of a defence. The question is: what defence? Ms Higgs's primary position is that it empowers the making of a defence as a 'destination', not as a 'gateway' to any of the Statutory Appeal Grounds as the defence. Mr Ham's primary position is that it empowers the making of a defence, by being a 'gateway' to the Statutory Appeal Grounds, but only to the two Statutory Appeal Grounds which involve 'invalidation' properly understood.

30. It was well recognised that the Statutory Disapplication – previously 1971 Act s.243(2) – involved 'empowering' the defendant, by giving them a defence not found elsewhere in the statute. In R v Greenwich LBC, ex p Patel (1985) P & CR 282, the Court of Appeal had explained why failure to serve an enforcement notice as required by the 1971 Act (1971 Act s.87(4)) did not, of itself, make an enforcement notice a "nullity" (at 291). That was because of the express statutory overlay of the Statutory Appeal Grounds (1971 Act s.88, including s.88(1)(e)) and the Statutory Disapplication (1971 Act s.243(2)). These provisions governed the basis on which an enforcement notice could be impugned. The Court of Appeal said this (at 291-292, emphasis added):

> ***One can start by looking to see whether a failure to comply with s.87(4) is dealt with expressly or impliedly in other parts of the Act. One finds at once that there are at least three relevant provisions: (a) s.88(1)(e), which gives a right to appeal to the Secretary of State on the ground "that the enforcement notice was not served as required by s.87(4) of this Act"; (b) s.88(4)(b) which empowers the Secretary of State to disregard the fact that a person required by s.87(4) to be served with a notice has not been served "if neither the appellant nor that person has been***

> ***substantially prejudiced by the failure to serve him"; (c) s.243(2), which gives a person charged under s.89(5) but who has not been served with an enforcement notice the right to question its validity on any of the grounds specified in s.88(1)(b) to (e) provided that he satisfies the court of the matters specified in s.243(2)(c). It is moreover, to be observed that a person who has not been served is not entitled to rely on s.243(2) so as to challenge the validity of an enforcement notice in criminal proceedings under s.89(5) if he cannot prove that "his interests have been substantially prejudiced by the failure to serve him" (s.243(2)(c)(ii)). In the light of these provisions, it seems to me to be impossible to contend that a failure to serve an enforcement notice in accordance with s.87(4) renders the notice a nullity.***

The reason why Patel refers only to some of the Statutory Appeal Grounds (1971 Act s.88(1)(b) to (e)) is because the Preclusive Clause was, at that time, restricted to those from the then Statutory Appeal Grounds (see Patel at 290).

31. The empowering nature of the Statutory Disapplication was also reflected in Collett (§23 above). There, the Court of Appeal referred to the Statutory Appeal Grounds including in particular ground (e) of 1971 Act s.88(1): failure to serve the enforcement notice as required by 1971 Act s.87(4). They this of the Statutory Disapplication (1971 Act s.243(2)) at 481C-D (emphasis added):

> ***Where proceedings are brought under section 89(5) [1990 Act s.179(5)], a defendant who can establish that he held an interest in the land before the enforcement notice was served, did not have the enforcement notice served on him, and can satisfy the court that, first, he did not know and could not reasonably have been expected to know that the enforcement notice had been served, and secondly that his interests have been substantially prejudiced by the failure to serve him, is, by this subsection, entitled to raise any of the grounds of appeal set out in section 88(1) by way of defence, including the fact that the enforcement notice was not served as required by section 87(4).***

The Symmetry Point

32. I can now turn to deal with the arguments in the case. One of Mr Ham's arguments for the Appellant is as follows. The phrase "could not reasonably have been expected to know that the enforcement notice has been issued" in the Statutory Disapplication (s.285(2)(c)(i)) is necessarily satisfied where "the notice is not contained in the appropriate register kept under section 188" in the Statutory Defence (s.179(7)(b)). In both provisions, registration is fatal. This is a principled symmetry. Any NonNewcomer, necessarily and by operation of the statute, can "reasonably have been expected to know that the enforcement notice had been issued (s.285(2)(c)(i)) if the notice was "contained in the appropriate register kept under s.188" (s.179(7)). The policy behind these provisions is as identified in Collett (§24 above), of encouraging vigilance, so that those with relevant land interests take all necessary steps to advise themselves of the planning status of the land. That discipline applies to NonNewcomers, just as it does to Newcomers. That is reinforced by the fact that the
Statutory Defence applies to them both. Parliament could have restricted the Statutory Defence to Newcomers, just as the Statutory Disapplication is restricted to NonNewcomers. Registration is therefore necessarily fatal, whether we are looking at the Statutory Disapplication of the Statutory Defence. A Non-Newcomer can always "reasonably have been expected to know that the enforcement notice has been issued" if the enforcement notice was registered under s.188. They should look at the register. As I see it, this argument straightforwardly reflects one of the Magistrates' Questions in the Stated Case (Q3) and one of the grounds of appeal (G3): see §52 below.

33. I cannot accept Mr Ham's submissions on this point. I agree with Ms Higgs on this part of the case. Registration is an established feature within the same statute (s.188). Parliament chose to deploy it – making registration fatal – for the Statutory Defence, which applies to Newcomers and Non-Newcomers. But Parliament did not make registration fatal for invoking the Statutory Disapplication. There is no symmetry with the Statutory Defence. For the Statutory Disapplication, the language (s.285(2)(c)) is broader. The criminal court has an evaluative question to answer, on the facts and evidence and submissions. One of the relevant features will be registration or nonregistration of the enforcement notice. One of the relevant features will be those circumstances which made it reasonable to expect the individual to check the register. It would have been very easy for Parliament to make registration (s.188(1)(a)) fatal to reliance on the Statutory Disapplication (s.285(2)). In law – if justified on the facts and in the circumstances of the individual case – it is open to the criminal court to find that a defendant "could not reasonably have been expected to know that the enforcement notice had been issued" even though the notice was contained in the register. The answer to (Q3) is "yes" and Ground (G3) fails.

34. This analysis does no more than give the statutory provisions their ordinary and natural meaning, interpreting the Act sensibly and as a whole. That is the end of it. But there is more which we can say. When the 1991 Act introduced (by 1991 Act s.8) the Statutory Defence making registration fatal (s.179(7)(b)), Parliament also made textual amendments to the Statutory Disapplication (by 1991 Act Sch 7 §42). Making registration fatal was not one of these. The Statutory Defence was a route by which genuine unawareness was, of itself, a defence if the person had not been served and the local authority had not registered the enforcement notice. The price of a failure to register is that genuine unawareness is, of itself, a defence unless the defendant was served. The prize for complying with the duty of registration is that this defence is unavailable.

35. This makes sense. A Newcomer can always be expected to search the register, and the Statutory Defence is the only route by which a Newcomer can rely on genuine unawareness of the enforcement notice. If you acquire a relevant land interest you are expected to look at a relevant register, to see how your rights and obligations are affected by what has happened before you came on the scene. True, the Non-Newcomer can also rely on the Statutory Defence, if there has been failure to register. But the NonNewcomer has the additional protection of the Statutory Disapplication, where registration is not a complete answer. If I acquire a land interest having checked the register and I remain in occupation, and the local authority later decides that something about my property is a planning breach but they never tell me or serve me – they simply register an enforcement notice of which I am genuinely and excusably unaware – I may still be able legitimately to say I could not reasonably have been expected to know it had been issued. I need a separate protection (s.285(2)) with a broader provision (s.285(2)(c)(i)). And that is what Parliament has given me.

The Reasonableness Point

36. Another of Mr Ham's arguments for the Appellant is as follows. The Magistrates' finding that the Respondent "could not reasonably have been expected to know that the enforcement notice has been issued" (s.285(2)(c)(i)) was unreasonable. Even if registration is not always fatal (the symmetry point), it may be fatal on the facts. That was the sole justifiable view of the facts here. The Respondent had applied on 29 August

2022 to renew an HMO licence. At that stage, she should have consulted the register or telephoned the Appellant to check the planning position. It was, for this reason, unreasonable to find that s.285(2)(c)(i) was satisfied, and to acquit her of a noncompliance crime, from 29 August 2022 onwards.

37. I cannot accept these submissions. I agree with Ms Higgs on this point. In the first place, I do not think this point is within the scope of the appeal. None of the Questions asked, and none of the Grounds of Appeal advanced, are about a duty arising on 29 August 2022 (§§52-53 below). None of them are about an application to renew a house in multiple occupation licence. None of them are about not convicting for part of the period in question (after 29 August 2022). The Stated Case records findings that a 5 year HMO licence was granted on 24 July 2017 and an application for renewal was made on 28 August 2022. The Stated Case records that this submission – among many others – which was made by the Appellant, in asking for a Stated Case:

> ***By running the property as an HMO for commercial gain, the defendant should reasonably be expected to undertake basic planning and other regulatory checks. Running an HMO is a highly regulated activity. The courts should expect basic compliance checks to be undertaken. It is a well-established principle that ignorance of the law is not a defence. The failure of a defendant to properly inform themselves of the regulatory framework concerning the activities they are running for commercial gain is unreasonable.***

Even this is about "running the property as an HMO". It does not describe a duty arising on 29 August 2022; or refer to convicting for part of the period in question (after 29 August 2022). The Magistrates' three questions are questions of law. (Q1) asks whether the Magistrates were "correct", because it is asking about the correct interrelationship in law between the statutory criteria. Mr Ham is mounting an argument about the facts, on the evidence. But if the Magistrates had been asking about a sufficiency of evidence for a finding, they would have said so. I think they would have wanted to include a summary of the evidence (CrimPR 35.3(4)(d) and (5)). I have needed to understand the evidence. I do not have the evidence, or even a summary of the evidence. All I have is a summary of some of the contentions by the parties.

38. But in any event, in the second place, it is in my judgment impossible to make a finding of unreasonableness of the conclusion that s.285(2)(c)(i) was satisfied on and after 29 August 2022. I have read the summary of submissions including on behalf of the Respondent about how she instructed a managing agent to manage the property, dealing with all aspects. I have read the Magistrates' findings about inspection visits facilitated by Amilli Properties. I have no material about running a property as an HMO or applying for a renewal of a licence, or about regulatory checks and frameworks. Registration is, as I have explained, not fatal for the Statutory Disapplication. I cannot find that the Magistrates' evaluative judgment on s.285(2)(c)(i) was wrong, let alone unreasonable.

The Destination Point

39. One of Ms Higgs's arguments for the Respondent is that the Statutory Disapplication is a freestanding set of criteria which, in and of themselves, constitute a defence to s.179 proceedings. They are a 'destination', not a 'gateway' to any Statutory Appeal Ground. Standing alone, it means this: in proceedings alleging a s.179 crime, it is a defence if a Non-Newcomer defendant was prejudicially-unserved with the enforcement notice and was genuinely and excusably unaware of its existence. The limbs of s.285(2) are a standalone defence. That is the end of the enquiry.

40. I am unable to accept this submission. I agree with Mr Ham on this part of the case. I have given my encapsulation (§22 above): in proceedings alleging a s.179 crime, the validity of an enforcement notice may be questioned on the Statutory Appeal Grounds, by a Non-Newcomer defendant who was prejudicially-unserved with it, and who was genuinely and excusably unaware of its existence. The Statutory Disapplication, for the defendant to s.179 proceedings, is a 'gateway' to access the Statutory Appeal Grounds. The nature of the agreed 'empowerment' depends on the content of the Statutory Appeal Grounds. This is what was said in Patel and in Collett (§§30-31 above). The Preclusive Clause (s.285(1)) prohibits reliance, except by Part 7 appeal, "on any of the grounds on which such an appeal may be brought". The Statutory Disapplication (s.285(2)) says that the Statutory Preclusion "shall not apply to proceedings brought under section 179". That means the validity of an enforcement notice can, in s.179 proceedings, be questioned on "grounds on which such an appeal may be brought", although s.179 proceedings are not a Part 7 appeal. Suppose Parliament amended s.174(2) and retained only s.174(2)(b) and (c): that the matters have not occurred or do not constitute a breach of planning control. A defendant to s.179 proceedings, who met the criteria in s.285(2), would have a 'gateway' to those Statutory Appeal Grounds as amended. But the s.174(2)(e) Statutory Appeal Ground – non-service of the enforcement notice as required by s.172 – would then have been removed. For as long as s.174(2)(e) remains, there is a twist, when the s.285(2) gateway can take the defendant to the Statutory Appeal Grounds, as I will explain (§48 below). But you have to go to s.174(2)(e) and s.176(5) to get to the destination.

The Invalidation-Grounds Point

41. One of Mr Ham's arguments for the Appellant is this. When the Statutory Disapplication 'gateway' takes the s.179 defendant to the Statutory Appeal Grounds, only two of those can avail the defendant, because only two of them are "invalidation" grounds. This was the essence of the argument, as I saw it.

    i) Section 285 is headed "validity of enforcement notices". It is within Part 12 ("Validity"). It is wrong to equate Part 7 Statutory Appeal Grounds as automatic grounds for impugning the "validity" of an enforcement notice. Part 7 is not concerned with "validity". Where an appeal succeeds on the Statutory Appeal Grounds, and where the enforcement notice is quashed (s.176(2)), it is not because the enforcement notice has been found to be "invalid". This is why an appeal allows corrections and variations, where this will cause no injustice (s.176(1)). So, for example, Statutory Appeal Ground s.174(2)(g) – insufficient time to comply – would be a basis for a s.176(1)(b) variation of the enforcement notice, to allow more time.

    ii) The Preclusive Clause prevents the "validity" of the enforcement notice being "questioned" in any proceedings "on any of the grounds on which such an appeal may be brought". This is describing an overlap, where: (a) validity of the enforcement notice is being questioned; and (b) a Statutory Appeal Ground applies. These are two distinct features, and they must overlap. You can question validity without one of the Statutory Appeal Grounds applying: these are the "residual" grounds identified in Wicks. Conversely, you can apply one of the Statutory Appeal Grounds without questioning validity. Absent the Preclusive Clause, you could

bring judicial review to impugn validity, even if there is this overlap with the Statutory Appeal Grounds. But you would still need to identify the invalidity.

iii) The Statutory Disapplication 'gateway' (s.285(2)) is only concerned with this same overlap, where: (a) validity of the enforcement notice is being questioned; and (b) a Statutory Appeal Ground applies. The only 'empowerment' permitted (§§29-31 above) is the impugning of validity, within the scope of a Statutory Appeal Ground.

iv) What is meant here by "validity" is a defect which "goes to the heart" of the enforcement notice. Properly interpreted and understood, there are only two Statutory Appeal Grounds which can do that. They are s.174(2)(c) (no breach of planning control) and s.174(2)(d) (enforcement action timed out).

v) Wicks decided that arguments based on invalidity of the enforcement notice were not available as a defence, because of the true meaning of "enforcement notice" in s.179. A s.179 defendant who has been served with an enforcement notice does not have this route to impugn validity. But nor does a s.179 defendant who has not been served. The words "enforcement notice" have the same, uniform meaning. The point is that the unserved s.179 defendant – if they meet the preconditions of the Statutory Disapplication – can raise a defence of invalidity which overlaps with a Statutory Appeal Ground.

vi) The s.174(2)(e) Statutory Appeal Ground is not an invalidation ground. This is well established, back to Patel (§30 above): failure to serve an enforcement notice does not make it a "nullity". If s.174(2)(e) were an invalidation ground, empowered by the Statutory Disapplication, the consequence would be that there would – after all – be no 'gateway' effect. That is because the ingredients of s.285(2) would – necessarily and already – satisfy the s.174(2)(e) Statutory Appeal Ground, as well as the substantial prejudice criterion (s.176(5)). That would make s.285 a 'destination' after all. Parliament cannot possibly have intended to provide a gateway to the Statutory Appeal Grounds, if one of them is already necessarily satisfied and the others are never needed. This outcome would also cut across the design of the Statutory Defence. The correct position is that the sole route by which non-service of an enforcement notice, and genuine unawareness of it, combine to produce a defence is the Statutory Defence (s.179(7)).

42. This is a powerful argument. But I have not been able to accept it. I agree with Ms Higgs on this part of the case. I will explain why.

43. First, the manifest purpose of the Statutory Disapplication is to replicate lost appeal rights. A Non-Newcomer, previously denied the right to have the enforcement notice quashed on appeal by reference to the Statutory Appeal Grounds, has the same rights by way of a defence if they are now prosecuted for non-compliance. This is its 'empowering' role (§§29-31 above). It makes sense. We are talking only of NonNewcomers, who should have been served with the enforcement notice. If the NonNewcomer has been served with the enforcement notice, or if in time they are aware of it, they have their statutory right of appeal. They can invoke any of the Statutory Appeal Grounds and the enforcement notice can be quashed. If they try to bring any other challenge to the enforcement notice, relying on any one of those Statutory Appeal Grounds, they are caught by the Preclusive Clause. It is not a question of whether the Statutory Appeal

Ground would have a vitiating consequence in whatever forum is being pursued. It is certainly not a question of whether the Statutory Appeal Ground would render the enforcement notice a "nullity". The idea of questioning validity in the Preclusive Clause is broader. You can look at the point that is being raised in the other proceedings, and match it to a Statutory Appeal Ground, and the Preclusive Clause bites. The word "validity" is really being used to mean "enforceability": Badcock v Hertfordshire County Council [2002] EWCA Crim 1941 §22. But if the person has not been served, and was genuinely and excusably unaware of the enforcement notice, they have lost their right of appeal. If they are then prosecuted, they can raise any of the Statutory Appeal Grounds which has been lost. They can question validity – impugn the enforcement notice – on any of the Statutory Appeal Grounds, in the proceedings brought under s.179. They are not being given a right to invoke only some of the Statutory Appeal Grounds, or only to a lesser extent than could have secured a quashing of the enforcement notice on an appeal. The rights that they have lost are being replicated. The Preclusive Clause takes the Statutory Appeal Grounds out of any other proceedings. The Statutory Disapplication puts them into a s.179 prosecution, for the person prejudicially unserved and genuinely and excusably unaware. The justice of that is obvious.

44. Secondly, this approach is supported by the authorities (§§30-31 above) which describe the – very well established – empowering effect of the Statutory Disapplication. There was the Court of Appeal in Patel:

> ***s.243(2) … gives a person charged under s.89(5) but who has not been served with an enforcement notice the right to question its validity on any of the grounds specified in s.88(1) (b) to (e) provided that he satisfies the court of the matters specified in s.243(2)(c).***

The limitation (1971 Act s.88(1)(b) to (e)) was not because of some narrowing idea of "validity", but because of the then express language of the Preclusive Clause. There was the Court of Appeal in Collett;

> ***… a defendant … is, by this subsection, entitled to raise any of the grounds of appeal set out in section 88(1) by way of defence, including the fact that the enforcement notice was not served as required by section 87(4).***

Both of these passages include the 1971 Act s.88(1)(e) ground (1990 Act s.174(e)).

45. Thirdly, this makes best sense of "validity" in s.285. In public law, ideas like "invalid" and "void" and "nullity" can have different connotations in different contexts. As Lord Steyn explained in R v Soneji [2005] UKHL 49 [2006] 1 AC 340 at §15, since London & Clydeside Estates Ltd v Aberdeen DC [1980] 1 WLR 182 language like "void" and "nullity" could be misleading in deciding the consequences of a defect in the exercise of a power and rigid legal classifications were discouraged; and what had emerged was a focus on intended legal consequence, asking the question whether invalidity was the consequence intended by Parliament. In the present context, the statute tells us that the Statutory Appeal Grounds (s.174(2)) are a basis on which an enforcement notice may be quashed (s.176(2)). That intended legal consequence carries into s.285(2). No elusive further distinction is being introduced. If the criminal court concludes that grounds are made out which would justify a quashing if they were dealing with a Part 7 appeal, the defendant is acquitted. That is because the defendant would win an appeal, having been denied one. There is no institutional problem, for a person who has not been served (cf. Wicks 119G). Historically, appeals to the magistrates and the collateral challenge

jurisdiction in criminal cases was unrestricted (Wicks 119C-D). Cf. Newham LBC v Thames Magistrates [2014] EWHC 4550 (Admin) at §36.

46. Fourthly, none of this is undermined by the established point about non-service not being a basis for finding an enforcement notice to be a "nullity". This is Patel (§30 above). What the Court of Appeal was doing was relying on the way in which failure to serve an enforcement notice as legally required "is dealt with expressly or impliedly in other parts of the Act". This is the same quest, about invalidity as the consequence intended by Parliament. The answer which the Court of Appeal gave in Patel was that the invalidating consequence was through the mechanisms of the statute. That included an appeal based on 1971 Act s.88(1)(e), where there has been substantial prejudice under s.88(4)(b) (1990 Act ss.174(2)(e) and 176(5)). It included the defence to criminal proceedings based on the right of the defendant to question the validity of the enforcement notice on any of the Statutory Appeal grounds – including s.88(1)(e) – provided that there is substantial prejudice under 1971 Act s.243(2) (1990 Act s.285(2)). There is no vitiating "nullity" because vitiating consequence is addressed through the express terms of the statute. There is no basis to ignore the vitiating consequence in the statute, because there is no freestanding "nullity". That turns Patel on its head.

The Quashing Question

47. The upshot of this is that 'validity' for the purposes of the Statutory Disapplication, involves the magistrates asking whether a Statutory Appeal Ground would justify a quashing order (s.176(2)). The legal policy of the Statutory Disapplication is this. Having been denied the right of appeal, the unserved and genuinely and excusably unaware defendant – now being prosecuted for non-compliance – does not have an out of time appeal to the inspector, but they do have replicated rights in the magistrates' court. The enforcement notice is not quashed. The defendant is acquitted. But they are acquitted because, in the judgment of the criminal court, the notice would be quashed if this were an appeal.

'Gateway' and 'Destination': The Twist

48. I said there was a twist (§40 above). I have explained why the Statutory Disapplication is a 'gateway' and the Statutory Appeal Grounds are the 'destination'. But I have also explained that one of the Statutory Grounds of Appeal is that the enforcement notice was not served as statutorily-required (s.174(2)(e)), which has caused substantial prejudice (s.176(5)). That means, as soon as the Statutory Application 'gateway' takes the s.179 defendant to the Statutory Appeal Grounds, they will have won, without more. It is the defendant who has not been served as statutorily-required (s.285(2)(b)) and the substantial prejudice is built-in (s.285(2)(c)(ii)). True, the defendant could invoke one of the other Statutory Appeal Grounds. But they do not need to. They have enough for their acquittal. By going to the 'destination' of the Statutory Appeal Grounds, the defendant discovers "you're already arrived". That means we have gone from Mr Ham saying there are only two invalidation grounds, to Ms Higgs saying that only one is ever needed.

49. This consequence does not, in my judgment, undermine the analysis. It is simply the consequence of replicating the lost rights of appeal of the person who lost those rights. None of them is excluded. All were conferred. Only one is needed. The Court of Appeal in Patel was speaking of this appeal ground when it spoke of the Statutory Disapplication giving the right to challenge the enforcement notice. The Court of Appeal in Collett was specifically singling out this as a ground of appeal which can be raised as a defence. See

§§310-31 above. That was in 1985 and 1993. Nobody thought this was an odd outcome. No amendment has been made. The 'destination' is still the Statutory Appeal Grounds. Parliament did not in s.285(2) exclude the ground of appeal in s.174(2)(e). The defendant to the criminal prosecution is acquitted. That is because they would successfully have appealed the enforcement notice which was never served, to their substantial prejudice, and of which they were genuinely and excusably unaware. They would – if this were an appeal – secure a quashing of the enforcement notice. Why should they be convicted?

The Quashing Question Here

50. In the present case, the Appellant does not contest that the Key Findings (§6 above) would be a basis for a quashing order (s.176(2)) based on the s.174(2)(e) Statutory Appeal Ground. Ms Higgs – who appeared below – tells me that the prosecution advanced no separate argument at the hearing as to s.174. The Stated Case records that: "It was agreed by Prosecution Counsel that the defendant was able to challenge the validity of the notice under s.285(2) TCPA 1990 if each of the requirements were met, and that it was open to the bench to acquit the defendant if they found the notice invalid". Mr Ham focuses on "if they found the notice invalid". He has made his various arguments about what that means and how it works. But he does not contest that – on the Key Findings – the enforcement notice would, if the prosecution were the appeal, stand to be quashed (s.176(2)) by reference to s.174(2)(e). It is clear, in my judgment, that it would. No further enquiry on that topic is necessary.

The Field-Occupation Point

51. There was one final argument, but it is closely associated with the points already addressed. Mr Ham submitted that the Statutory Defence "occupies the field", as the sole and exclusive route by which an unserved and unaware defendant can secure an acquittal, based on being unserved and being unaware. I cannot accept that submission. On this part of the case I agree with Ms Higgs. Parliament has provided two routes, which I have encapsulated (§§18 and 22 above). The Non-Newcomer can rely on either of them. If the enforcement notice was unserved but registered, the route is the lost. But appeal ground (s.174(2)(e)), with genuine and excusable unawareness and with substantial prejudice, suffice. The Statutory Defence did not, in 1991, subtract from the Statutory Disapplication. The provisions overlap. But neither subverts the other.

Answering the Questions

52. Here are the three Questions posed by the Magistrates for the opinion of the High Court, with my answers in the light of my analysis above:

(Q1) Where the Court is satisfied that an enforcement notice is contained on the register kept in accordance with s.188 of the 1990 Act, were we correct to acquit the defendant on the basis that we were not satisfied that she was adequately served with a copy of the enforcement notice, and would not be reasonably have been expected to have known about the enforcement notice, if the other conditions of s.285 of the Act were satisfied?

Answer: Yes.

(Q2) For the purposes of s.285(2)(b) and s.174(2)(e) of the Town and Country Planning Act 1990 does the failure to serve "a copy of" an enforcement notice render the [original] enforcement notice invalid, or is non-service simply one of the necessary elements to open the gateway to then challenge the validity of the [original] enforcement notice under s.285?

Answer: Non-service is a necessary element to open the gateway under s.285(2)(b). But it is also a defence, if the other elements of s.285(2) are satisfied, if an enforcement notice would be quashed under s.176(2), on an appeal relying on s.174(2)(e).

(Q3) Where the Court is satisfied that an enforcement notice is contained on the s.188 register, is it still open to the Court to find that the defendant "could not reasonably have been be expected to know that the enforcement notice had been issued" as per s.285(2)(c)(i)?

Answer: Yes.

Responding to the Grounds

53. Here are the Appellant's three Grounds of Appeal, with my responses in light of the analysis above.

(G1) That s.285(2) Town and Country Planning Act 1990 is no more than a "gateway" to then go on to challenge the validity of an enforcement notice, which is otherwise prohibited by s.285(1). Providing the tests in s.285(2) are met, this then enables the validity of the enforcement notice to be challenged on the grounds set out under Part 7. It does not automatically render the enforcement notice invalid if the conditions in s.285(2) are met. The Court therefore erred in treating the conditions in s.285(2) as a defence.

Response: This ground fails. Yes, s.285(2) is a gateway. Provided the tests in s.285(2) are met, the validity of the enforcement notice can be challenged as a defence in proceedings under s.179, on the grounds in Part 7. But since that includes s.174(2)(e), as a basis for a quashing under s.176(2), the Court did not err.

(G2) Failure to serve "a copy of" an enforcement notice does not make the [original] enforcement notice invalid – something more is required in order to demonstrate

that the enforcement notice is invalid. The Court erred in finding the [original] enforcement notice invalid because a "copy of" it had not been served.

Response: This ground fails. In proceedings under s.179, where the tests in s.285(2) are met, the validity of the enforcement notice can be challenged as a defence, on the grounds in Part 7. Again, since that includes s.174(2)(e), which was satisfied as a basis for a quashing under s.176(2), the Court did not err.

(G3) The Court erred in finding that the defendant "could not reasonably have been expected to know that the enforcement notice had been issued" when the notice was duly registered on the statutory s.188 enforcement register.

Response: This ground also fails. Where the Court is satisfied that an enforcement notice is contained on the s.188 register, it is still open to the Court to find that the defendant "could not reasonably have been be expected to know that the enforcement notice had been issued" as per s.285(2)(c)(i).

Conclusion

54. For the reasons I have given, the appeal is dismissed.

Costs

55. Having circulated this judgment as a confidential draft, I would have hoped to deal here with any consequential matter. In the event, there is a loose end. The Respondent asks me to make an order for costs out of central funds (s.16 of the Prosecution of Offences Act 1985) by reference to the Lord Howard line of cases [2018] EWHC 100 (Admin). I have understood the Appellant, for its part, not to oppose this course. But, as I have informed the parties, I need the draft order which I am being invited to make, brief submissions by reference to the authorities, the relevant authorities or commentary, and confirmation that the analysis is agreed. In the circumstances, I will need to deal subsequently with this loose end.