

Case Name: *Oates v Secretary of State for Communities and Local Government & Anor* [2018] EWCA Civ 2229 (12 October 2018)

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Commentary: Dismissal of an appeal at the Court of Appeal against the decision to uphold an enforcement notice which required the complete demolition of three “new buildings” whose construction had incorporated parts of the buildings previously on site.

The appellants argued that the Inspector had erred in law in her approach – she had not identified the precise extent of the breach of planning control and so had failed to consider what had to be done to correct that breach. The appellants argued that surviving parts of the original, lawfully erected buildings on the site could not be properly enforced against. The requirements of the enforcement notice went beyond what was necessary to correct the breach of planning control and constituted “over-enforcement”. Therefore, the enforcement notice, if upheld, should be varied.

It was held that the Inspector had not erred in law. She had concluded that the buildings now on site were “new buildings”. The “original buildings” had been largely demolished and the remaining elements intimately incorporated into the fabric of the “new buildings”. The “original buildings” no longer existed as recognisable, independent structures. Further, a lawful use right attaching to a building can only be exercised while that building survives so as to be physically capable of being used for the relevant purpose. The “original buildings” were no longer capable of being lawfully used as they had metamorphosed into “new buildings”, without planning permission. The Inspector, therefore, could only conclude that the requirement in the enforcement notice to remove the three buildings was not excessive.

The judges here concluded that this was classically a matter of fact and evaluative judgement for the Inspector as decision-maker. It was not for the court to consider and determine afresh in an appeal under section 289.

Case summary prepared by Town Legal LLP