

Case Name: *Thomas & Ors, R (On the Application Of) v North Northamptonshire Council*
[2021] EWHC 1428 (Admin) (27 May 2021)

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Commentary:

This was a judicial review against the issue of an enforcement notice by Kettering Borough Council ('KBC'). Interestingly following the initial issue of the claim KBC ceased to exist and a new unitary authority North Northamptonshire Council ('NNC') was established which subsumed the functions and responsibilities of KBC (including the issue of enforcement notices).

The one substantive ground of challenge considered by the Court was whether KBC had the legal power to issue the enforcement notice. The Claimant (the owners and occupier of the site) claimed that KBC did not have this power on the basis that the enforcement notice alleged a breach relating to both mineral activities and a mixed-use planning breach. At the time the enforcement notice was served, KBC were in a two-tier local government system, whereby the district/borough are the local planning authority, and the county council (at that time Northamptonshire County Council) are the mineral planning authority. The Claimants made the case that the KBC at the time of service had no authority to serve a notice alleging breaches relating to mineral activities.

The Court initially dealt with the preliminary matter of whether the claim was in fact now academic since NNC, the new unitary authority, now dealt with both functions (i.e. planning and mineral activities). The Court found however that the regulation 6(3) of the Local Government (Boundary Changes) Regulation 2018, which deals with the continuity of legal effect to predecessor authorities, did not have the effect of extinguishing previous actions upon transfer to the successor authority. The Court found that the purpose of such a continuity provision was not to make valid, retrospectively, an act that was invalid when done.

On the main issue the Court held that in a two-tier authority, the only circumstance in which the function of issuing an enforcement notice under section 172 of the Town and Country Planning Act 1990 may not be lawfully exercised by the relevant district/borough is where the alleged breach of planning control relates wholly to a county matter within the subset identified in paragraph 1(1)(a)-(h) of Schedule 1 of the 1990 Act. In this case although parts of the breach, if viewed in isolation, fell within that subset, they could not be viewed in that way in this case. The site had a single composite (mixed) use and the other elements (including the mineral activities) could not be decoupled in planning terms. Therefore, it was open to KBC to lawfully serve the enforcement notice subject to consulting the county (which KBC did) in respect of county matters pursuant to paragraph 11(2) of Schedule 1.

It was therefore found the KBC did have the power to issue the enforcement notice, and the claim was dismissed on this basis.

Case summary prepared by Chris Todman