

Case Name: *Secretary of State for Levelling Up, Housing and Communities v Caldwell & Anor* [2024] EWCA Civ 467 (02 May 2024)

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Commentary: This was an unsuccessful appeal by the SSLUHC (“the Appellant”) against the decision in the High Court by Mrs Justice Lieven to quash an Inspector’s decision regarding the validity of an enforcement notice. The case identifies the ambit of the Murfitt principle and whether it applied in the circumstances in this case.

Background

Mr Ian Caldwell (“the 1st Respondent”) constructed a bungalow and used it as a residential dwelling within the Metropolitan Green Belt site without planning permission. Construction began in November 2013 and was completed in March 2014. Buckinghamshire Council (“the LPA”) were notified of this breach of planning control in January 2014 but only issued an enforcement notice (“the EN”) against the breach in February 2021. The EN required both the cessation of residential use and demolition of the bungalow.

The 1st Respondent appealed the EN to the Appellant and this appeal was decided by an Inspector appointed by the Appellant. The EN was challenged on various grounds including, that the EN could not lawfully require the removal of operational development (i.e. removal of the bungalow) as such development was immune from enforcement as a result of the expiry of the relevant enforcement time period under s.171B(1) of the Town and Country Planning Act 1990, as it then was.

Statutory provisions

S.171B of the TCPA 1990, at the relevant time, stated that no enforcement action can be taken against operational development after the end of the period of four years beginning with the date on which the operations were substantially completed. However, , under the same statutory provision, the time period for enforcement for material change of use was 10 years beginning with the date of breach. It must be noted that s.171B has since been amended by s.115 of the Levelling-Up and Regeneration Act 2023 (“LURA 2023”) which provides that both operational development and material changes of use will be subject to an enforcement period of 10 years. The transitional arrangement for the LURA 2023 states that this amendment does not apply where the breach of planning control occurred before 25 April 2024. Therefore, for the purposes of this case, the relevant enforcement periods for breach of planning control are as provided under the earlier version of s.171B of TCPA 1990 applied (i.e. 4 years for operational development and 10 years for material changes of use).

Inspector’s decision

The Inspector upheld the EN concluding that, although operational development would

normally be immune from enforcement following expiry of the 4-year enforcement period under s.171B (as it then was), “where there has been a material change of use of land, structures which may, viewed in isolation, have become immune from enforcement may nonetheless be required to be removed in order to restore the land to the condition it was in before the breach of planning control occurred”. He came to this conclusion relying on the Murfitt principle, which arises from the case of *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC (1980) 40 P&CR 254*. The Murfitt principle, in essence, prescribes that where operational development is integral to and part and parcel of the material change of use against which enforcement notice is issued, such enforcement notices can require the operational development to be removed so as to require the land to be restored to its original condition, even if the relevant enforcement period for operational development has expired.

The 1st Respondent challenged the Inspector’s Decision on the basis that he erred in law in relation to the scope of the power to require the removal of operational development under s.173(4) of the TCPA 1990. In the High Court, Mrs Justice Lieven quashed the Inspector’s decision holding that he misunderstood the scope of the Murfitt principle and thus erred in law. The issue before the Court of Appeal was whether the High Court was correct in its interpretation of the Murfitt principle, namely its limitations.

Judgement

Sir Keith Lindblom held that Mrs Justice Lieven in the High Court correctly identified the limitations of the Murfitt principle, which has been recognised in previous cases such as *Kestrel Hydro v Secretary of State for Communities and Local Government [2023] P.T.S.R. 2090* and *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government [2021] P.T.S.R. 1296*. This was that the Murfitt principle only applies to those cases where the operational development is deemed “ancillary” to the change of use; where operational development is “fundamental to or causative of the change of use” (i.e. where the operational development has brought about the change of use) then the Murfitt principle cannot apply. The scope of the Murfitt principle must be limited in this way to ensure that the principle is not applied in a manner inconsistent with the statutory provisions. S.171B, as it was at the relevant time, provided a clear distinction between enforcement periods for operational development and material changes of use. The Murfitt principle, which has been developed by the Courts through case law, must be applied in a manner consistent with the ambit and wording of the relevant statutory provisions. As a result, the Murfitt principle, the Court found, did not apply to the current circumstances since the construction of the bungalow was deemed as a “fundamental” or “causative” operational development which brought about residential use, therefore, the EN could not lawfully require the removal of the bungalow. The Inspector failed to grasp this distinction and misdirected himself on the Murfitt principle thus erring in law in the exercise of his powers under s.173(4) of the TCPA 1990.

Given the above conclusion, the Court of Appeal did not explore the second issue raised by the 1st Respondent that, alternatively, the Inspector applied the Murfitt principle irrationally.

For the above reasons, the appeal was dismissed.

Further commentary:

The Court was keen to emphasise that this judgement should be read bearing in mind the change to the statutory enforcement time periods brought about by the LURA 2023, as described above.

Case summary prepared by Chatura Saravanan