

Case Name: *Taytime Ltd v Secretary of State for Levelling Up, Housing And Communities & Ors* [2024] EWHC 1053 (Admin) (07 May 2024)

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a) **Commentary:**

This was a statutory challenge under s.288 TCPA 1990 against the decision of an inspector to dismiss an appeal for development in Marden, Kent on the basis that the appellant had not appointed another company to act as its agent following its insolvency.

Background

The application for planning permission, and the appeal against refusal of planning permission, were both made by Monk Lakes Limited ("MLL"). Subsequently, on 15 July 2021, MLL filed for creditors voluntary liquidation and therefore it could not pursue the appeal on its own behalf. One of the liquidators of MLL wrote to the Planning Inspectorate in September 2021 stating it had appointed Taytime Limited "to take over full responsibility for the above-listed planning appeal". However, in his decision letter dated November 2022, the Inspector concluded, on the evidence before him, that "it is now Taytime pursuing the appeal, as the appellant and not as an agent" which was impermissible on the basis that Section 78 provides the right to appeal against planning decisions but is explicitly limited to 'the applicant'. There were no third party rights of appeal and, as such, the inspector dismissed the appeal.

Grounds of challenge

Taytime Limited challenged the inspectors' decision on a number of grounds:

i) Ground 2(i).

- a) The Inspector's decision that the appeal was not properly made was plainly wrong as it was agreed that MLL validly made the appeal before liquidation proceedings began. MLL had not been dissolved and the appeal had not been withdrawn.
- b) Therefore, if the Inspector was not satisfied that Taytime was validly acting as MLL's agent, the Inspector should have followed the statutory procedure in section 79(6A) TCPA 1990, for the dismissal of a planning appeal for want of prosecution. This would have given MLL, through its liquidators, an opportunity to take steps to avoid the appeal being dismissed because it was not being pursued.
- c) It was also procedurally unfair to dismiss the appeal without first notifying MLL, through the Liquidators, and seeking their confirmation as to whether or not they wished to proceed with the appeal.

- d) In the alternative, MLL, through its liquidators, lawfully assigned the cause of action in the appeal to Taytime.

ii) Ground 2(ii).

- a) The Inspector erred in law in concluding that Taytime was not acting as MLL's agent. The liquidators' letter of September 2021 validly appointed Taytime as agent, pursuant to its powers under paragraph 12, Part 111 of Schedule 4 to the Insolvency Act 1986.
- b) The Inspector failed to give adequate reasons for his conclusion that Taytime was not acting as an agent for MLL, or that "it is now Taytime pursuing the appeal, as the appellant and not as an agent".

Decision

In finding for the Claimants, Mrs Justice Lang upheld the first three limbs of Ground 2(i) and found that the Inspector fell into error by concluding that there was no valid appeal capable of being determined, and that since the appeal had not been withdrawn, it had to be dismissed. The inspector had earlier found that MLL was still in existence and could in principle pursue the appeal. The inspector therefore should have taken steps to find out whether, MLL, acting through its liquidators, intended to withdraw the appeal or pursue it. The court considered that it was "premature and unfair to dismiss the appeal outright without doing so".

Mrs Justice Lang dismissed the further arguments made by the Claimant that the inspector "erred in law" in concluding that Taytime was not acting as MLL's agent and that liquidators had "validly appointed Taytime as agent" The court held that it was "clear that only the applicant for planning permission may appeal against a refusal of planning permission. There is no ability for a third party to pursue an appeal under section 78 TCPA 1990. Therefore, no power to assign can be derived from the wording of section 78 or any other provision in the TCPA 1990. The court concluded that "MLL's right of appeal under section 78(1) TCPA 1990 cannot be assigned to a third party by the liquidators".

The court held that the appropriate relief on the successful ground of claim would be determined following submissions from counsel.