

Case Name: *Captain Lee Jones v Shropshire County Council [2025] EWHC 365 Civ*

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Commentary: This concerned an application for judicial review of the decision of the Defendant, Shropshire County Council, to issue and serve a CIL stop notice on the claimant, Captain Lee Jones, under regulation 90 of the Community Infrastructure Regulations 2010 (“the CIL Regulations”). The single ground of challenge pursued by the Claimant was that the Defendant’s administrative action in issuing and serving the Notice was time barred by virtue of section 9 of the Limitation Act 1980 (“the 1980 Act”).

The Claimant's case was that the issue of a CIL stop notice pursuant to regulation 90 of the CIL Regulations is an action to recover a sum recoverable by virtue of the CIL Regulations. Under section 9 of the 1980 Act, such an action may not be brought after six years from the date on which the cause of action accrued, and here the cause of action accrued on 13 August 2015 when the Defendant demanded payment of the chargeable amount. By 23 September 2022 when the Notice was issued, more than six years had elapsed, and therefore the Defendant issued the Notice after the applicable limitation period had expired.

The judicial review was dismissed as the Court held that the time limit enacted under section 9(1) of the 1980 Act does not apply to the issue by a collecting authority of a CIL stop notice in the exercise of the powers conferred by regulation 90 of the CIL Regulations.

Factual background

Captain Jones was granted planning permission by the Council to build a detached house and triple garage on 5 June 2015. He proposed to carry out development authorised by the grant of planning permission himself, and to rely upon the self-build exemption from liability to CIL under regulation 54A of the CIL Regulations. On 10 July 2015 he emailed the Council of his intention to begin development the following day, which was acknowledged by the Council, but did not complete or submit the requisite form under regulation 54B of the CIL Regulations.

On 13 August 2015, the Council notified that date as the deemed commencement date for development and issued a demand notice requiring immediate payment of the chargeable amount of £39,361.43. In ensuing correspondence, the Claimant said that he intended his email of 10 July to be notice of commencement of the development in reliance on the self-build exemption. In response, the Council did not disagree that that was his intention but insisted that the statutory procedure complied laid down by regulation 54B must be followed. Following extensive correspondence between the parties, the Council issued a fresh demand notice so as to enable the Claimant to pursue an appeal, which he did, against the deemed commencement date and

imposition of the surcharge. In April 2017, the appeal was allowed by an Inspector, but this decision was subsequently challenged in the High Court and quashed (see [R \(Shropshire Council\) v Secretary of State for Communities and Local Government \[2019\] EWHC 16 \(Admin\)](#)), and permission to appeal to the Court of Appeal was refused on 10 September 2019.

On 23 September 2023, following the serving of two CIL warning notices on the Claimant, the Council issued and served a notice prohibiting all works on the land that had not already been carried out in relation to the grant of planning permission. The notice stated that full payment of the unpaid chargeable amount was required for it to be withdrawn.

Submissions

Counsel for the Claimant submitted that the issue of a CIL stop notice in the exercise of powers conferred on a collecting authority under regulation 90 of the CIL regulations is an action to recover a sum recoverable by virtue of an enactment, and so is subject to the time limit imposed by section 9 of the 1980 Act. It was submitted that the ordinary, natural meaning of the word "action" in the context of section 9 includes administrative action by a local authority exercising statutory powers and which is contemplated by the governing statute. When a CIL stop notice is issued, it is done so for the purpose of recovering a sum of money recoverable by virtue of the CIL Regulations. The power to issue a stop notice is contingent upon there being an amount of unpaid CIL. In issuing a stop notice, a collecting authority is bringing an action to recover that sum.

Counsel for the Defendant submitted that while the meaning of the word "action" can embrace administrative action taken by a local authority exercising its statutory powers, when read against the 1980 Act and particularly section 9(1), it could not bear that meaning. The Court agreed. Applying the definition of the word "action" of the Divisional Court in *China v Harrow Urban District Council* [1954] 1 QB 178, subsequently extended in section 38(1) of the 1980 Act, Mould J determined that the administrative act by a public authority exercising statutory powers does not fall within the ordinary meaning of an action brought in a court of law. Therefore, there was nothing in section 9 or Part 1 of the 1980 Act to support the contention that the time limit in section 9(1) was intended to apply to such administrative action. The Court also considered that it was "far too great a leap of logic" to infer from the insertion of subsection 38(11), which provided clarity and certainty in that Act to the specific circumstances of social security legislation, that where the words "an action" are used in section 9(1), they are intended to extend generally to embrace any administrative action by a public authority enforcing payment of a sum recoverable by enactment.

The Claimant placed some reliance on *In re Memco Engineering Ltd* [1986] 1 Ch 86 as authority for the proposition that administrative action by a public authority exercising statutory powers to recover a sum of money may be an action or proceeding. However, Mould J held that this line of authority from “the highly specific context of company legislation” did not “shed any meaningful light” on the very different context of the 1980 Act.

The Claimant also submitted that if the Defendant was correct that the time limit enacted in section 9(1) of the 1980 Act did not apply to the issue of a CIL stop notice, the result would be that a developer might be exposed to the risk of enforcement proceedings for the recovery of CIL indefinitely. By contrast, Parliament imposed a time limit under regulation 97(3) of the CIL Regulations on making an application to a magistrates’ court for a liability order. On this basis, it was submitted that the Court should be cautious to conclude that Parliament intended that the power to issue a CIL stop notice conferred under Regulation 90 should remain available without any time limit.

However, the Court held that these concerns were overstated: the power to issue a CIL stop notice was conferred on collecting authorities as an alternative means of enforcing payment of CIL without the need to bring recovery proceedings in the magistrates’ court. The power also enables a collecting authority to incentivise a developer to pay CIL due in respect of their development. Its very value as an enforcement tool is founded upon denying the developer the opportunity to realise the value of their investment without having made their due contribution to the infrastructure needs of their local community.

Conclusion

The Court held that the time limit enacted under section 9(1) of the 1980 Act does not apply to the issue by a collecting authority of a CIL stop notice in the exercise of the powers conferred by regulation 90 of the CIL Regulations. The issue of a CIL stop notice is not an “action” to recover a sum recoverable by virtue of any enactment, within the meaning of section 9(1) of the 1980 Act. It was unnecessary for the Court to further determine whether the issue of the notice was an action “to recover any sum” within the meaning of section 9(1) of the 1981 Act.

This application for judicial review was therefore refused.

Case summary prepared by Gregor Donaldson