Neutral Citation Number: [2019] EWCA Civ 21

Case No: C3/2017/2160

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)**
**SIR DAVID HOLGATE, PRESIDENT**
**[2017] UKUT 0238 (LC)**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 January 2019

**Before:**

**Lord Justice Lindblom**
**Lord Justice Irwin**
**and**
**Lady Justice Nicola Davies**

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**Between:**

| | |
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| **Keith Huddlestone** | **Appellant** |
| **- and -** | |
| **Bassetlaw District Council** | **Respondent** |

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**Mr Jonathan Wills** (instructed by **OCL Solicitors**) for the **Appellant**
**Mr Jonathan Mitchell and Mr Matthew Barnett** (instructed by **Bassetlaw District Council**) for the **Respondent**

Hearing date: 11 October 2018

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# Judgment Approved by the court for handing down (subject to editorial corrections)

## Lord Justice Lindblom:

*Introduction*

1. Did the statutory exclusion of compensation for loss arising from the prohibition in a stop notice of an activity that would be a "breach of planning control" apply in the circumstances of this case? That is the question in the appeal before us.

2. The appellant, Mr Keith Huddlestone, appeals against the decision of the President of the Upper Tribunal (Lands Chamber), Sir David Holgate, dated 10 July 2017, on a preliminary issue, that section 186(5)(a) of the Town and Country Planning Act 1990 prevented him from pursuing his claim for compensation under section 186 for loss said to have been caused by a stop notice served by the respondent, Bassetlaw District Council, in the course of enforcement action against alleged breaches of planning control involving the development of "residential accommodation units" on land at Lound Hall, Colliery Access Road, Bothamsall. I granted permission to appeal on 22 December 2017.

3. On 22 May 2006 the council had granted planning permission for development on the site, described in the decision notice as a "change of use of land for siting holiday lodges". The planning permission was subject to 24 conditions, including one restricting the use of the lodges to "holiday accommodation only", and 15 requiring various details to be submitted and approved by the council, 12 of which required such approvals to have been given before development commenced. Development was subsequently carried out on the site before the "pre-commencement" conditions had all been complied with. Between October 2009 and November 2011 the council issued three enforcement notices: the first on 27 October 2009, which was followed by a stop notice served on 19 November 2009, but was quashed by an inspector on appeal, on 8 June 2010; the second on 13 July 2011, which was withdrawn on 28 October 2011; the third on 17 November 2011, which was varied and upheld on appeal on 11 May 2012. On 7 June 2011 Mr Huddlestone made a claim for compensation under section 186. The parties eventually agreed that a preliminary issue should be determined by the Tribunal. The preliminary issue was this:

> "Whether having regard to the matters recorded in the inspectors' decision letters of 8th June 2010 and 11th May 2012 concerning breaches of planning control on the part of Mr Huddlestone, he is not entitled to make the claim for compensation by virtue of s.186(5)(a) of [the 1990 Act]".

4. In its decision, dated 10 July 2017, the Tribunal rejected the argument put forward on behalf of Mr Huddlestone, which included the submission that section 186(5)(a) did not apply in this case because, while the stop notice was in force between 19 November 2009 and 8 June 2010, he could have complied with the conditions imposed on the 2006 planning permission by applying for and obtaining the outstanding approvals required.

*The issue in the appeal*

5. The single main issue in the appeal is this: whether, in the circumstances of this case, including the fact that, throughout the period when the stop notice was in force, the development it prohibited was in breach of planning control, section 186(5)(a) excluded the payment of compensation for loss caused by that prohibition.

*The statutory provisions*

6. Section 172(1) of the 1990 Act confers on a local planning authority the power to issue an enforcement notice where it appears to it "(a) that there has been a breach of planning control", and "(b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations". Section 171A(1) defines a "breach of planning control", in this way:

> "(1) For the purposes of this Act –
> (a) carrying out development without the required planning permission; or
> (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
> constitutes a breach of planning control."

Section 173(1) requires an enforcement notice to state "(a) the matters which appear to the local planning authority to constitute the breach of planning control", and "(b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls". Section 174 gives a right of appeal against an enforcement notice to any person interested in, and any "relevant occupier" of, the land, on any of the seven grounds set out in subsection (2). Those grounds include ground (a), "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged"; ground (b), "that those matters have not occurred"; ground (c), "that those matters (if they occurred) do not constitute a breach of planning control"; ground (f), "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach"; and ground (g), "that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed". Section 175(4) provides that an enforcement notice is of no effect pending the determination of an appeal against it. Section 176(1)(b) permits the Secretary of State, on an appeal under section 174, to vary its terms.

7. When an enforcement notice is served but before it comes into effect, the local planning authority may serve a stop notice under section 183. That section provides:

> "(1) Where the local planning authority consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice, they may, when they serve the copy of the enforcement notice or afterwards, serve a notice (in this Act referred to as a "stop notice") prohibiting the carrying out of that activity on the land to which the enforcement notice relates, or any part of that land specified in the stop notice.
>
> (2) In this section and sections 184 and 186 "relevant activity" means any activity specified in the enforcement notice as an activity which the local planning authority require to cease and any activity carried out as part of that activity or associated with that activity.
>
> …

(6) A stop notice may be served by the local planning authority on any person who appears to them to have an interest in the land or to be engaged in any activity prohibited by the notice.

(7) The local planning authority may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on persons served with the stop notice."

(see generally the note at P183.08 of the Encyclopedia of Planning Law and Practice, and *R. v Secretary of State for Wales, ex p. Welsh Aggregates* [1982] J.P.L. 696 and [1983] J.P.L. 50). Section 184(4) provides:

"(4) A stop notice shall cease to have effect when –
(a) the enforcement notice to which it relates is withdrawn or quashed; or
(b) the period for compliance with the enforcement notice expires; or
(c) notice of the withdrawal of the stop notice is first served under section 183(7)."

There is no statutory right of appeal against a stop notice. However, it is possible to challenge a local planning authority's use of the stop notice procedure in a claim for judicial review (see the note at P183.14 in the Encyclopedia of Planning Law and Practice).

8. Section 186 provides for compensation arising from the service of a stop notice:

"(1) Where a stop notice is served under section 183 compensation may be payable under this section in respect of a prohibition contained in the notice only if –
(a) the enforcement notice is quashed on grounds other than those mentioned in paragraph (a) of section 174(2);
(b) the enforcement notice is varied (otherwise than on the grounds mentioned in that paragraph) so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity;
(c) the enforcement notice is withdrawn by the local planning authority otherwise than in consequence of the grant by them of planning permission for the development to which the notice relates; or
(d) the stop notice is withdrawn.

(2) A person who, when the stop notice is first served, has an interest in or occupies the land to which the notice relates shall be entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice …

(3) A claim for compensation under this section shall be made to the local planning authority within the prescribed time and in the prescribed manner.

…

(5) No compensation is payable under this section –
(a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control …

…

… ."

*The planning permission of 22 May 2006*

9. Condition 1 of the planning permission granted by the council on 22 May 2006 stated that the development "must be begun not later than the expiration of five years beginning with the date of [the] permission". Three of the conditions – conditions 4, 8 and 19 – were the focus of argument before the Tribunal. They state:

> "4. The development hereby permitted shall be carried out only in accordance with the details and specifications shown on amended drawing number 04 submitted with the applicant's agent's letter of 15 September 2004.
>
> …
>
> 8. The lodges hereby permitted shall be used as holiday accommodation only and no holiday lodge shall be occupied in excess of nine months continually in any twelve month period.
>
> …
>
> 19. Precise details of the lodges hereby permitted shall be submitted to and agreed in writing by the District Planning Authority before development commences. The development shall be carried out only in accordance with the agreed details.
>
> …".

As well as condition 19, there were 11 others requiring the submission of various details and their approval by the council before development commenced (conditions 3, 5, 9, 10, 12, 15, 20, 21, 22, 23 and 24).

*The enforcement notices and the stop notice*

10. The first enforcement notice, issued by the council on 27 October 2009, stated:

> "1. THIS NOTICE is issued by the Council because it appears to them that there has been a breach of planning control, under section 171A(1)(a) of [the 1990 Act] …".

It alleged this breach of planning control:

> "3. …
>
> Without planning permission, the material change of use of land for the siting of residential accommodation units at Cupola House and Bridge House, Lound Hall Estate, Bothamstall … ."

and stated the council's reasons for issuing the notice:

> "4. …
>
> The site was part of a larger site for which planning permission was granted in May 2006 for the siting of holiday lodges but is now in separate ownership. The development of the adjacent site commenced but as a result of non-compliance with planning conditions was considered to be unlawful. In considering that application however, the comprehensive treatment of the site was a consideration together with the nature of the lodges proposed.
>
> The units to which this Notice relates are not considered to be appropriate to the location by virtue of their design, appearance and layout. As such, they are considered to be detrimental to the general character and appearance of the area and in direct conflict with National Government advice and local planning policies."

The steps required to be taken included these:

> "5. …
>
> i) Cease using the land (shown edged red on the attached location plan) for the siting of residential accommodation units;
> ii) Remove all the accommodation units [from] the land …
>
> … ."

The time for compliance with the notice was six months. The notice stated that it would take effect on 7 December 2009 unless an appeal was made against it.

11. Mr Huddlestone appealed against the notice on grounds (a), (c), (f) and (g). Under section 175(4) of the 1990 Act, the notice lost its effect pending the determination of the appeal.

12. The council's stop notice, served on 19 November 2009, stated:

> "1. On 27 October 2009 the Council issued an enforcement notice … alleging that there had been a breach of planning control on Land to the South West of Lound Hall, Colliery Access Road, Bothamstall, Nottinghamshire.
>
> 2. This Notice is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry of the period allowed for compliance with the requirements of the enforcement notice on the land described in paragraph 3 below. The Council now prohibit the carrying out of the activity specified in this notice. … .
> …
>
> 4. Activity to Which This Notice Relates.

Cease the introduction and siting of any further accommodation units, caravans, chalets and other structures onto the land.

5. What You Are Required To Do.

Cease all the activity specified in this notice.

6. When This Notice Takes Effect.

This notice takes effect on 19 November 2009 when all the activity specified in this notice shall cease."

13. In his decision letter dated 8 June 2010 the inspector allowed Mr Huddlestone's appeal against the enforcement notice on ground (c). He did not consider the other grounds. Under section 184(4)(a), therefore, the stop notice immediately ceased to have effect. The inspector's reasoning is summarized in the Tribunal's decision (in paragraph 14):

"(i) None of the conditions in the planning permission relied upon by [the council] amounted to conditions precedent to the implementation of the permission or went to the heart of the permission (applying [*R. (on the application of Hart Aggregates Ltd.) v Hartlepool Borough Council* [2005] 2 P. & C.R. 31]).
(ii) Therefore, [Mr Huddlestone's] failures to apply for and obtain approval of details under those conditions did not prevent the activities and works which had been carried out from being treated as a commencement of development, with the consequence that the planning permission had been lawfully implemented;
(iii) Although those failures were breaches of condition which amounted to breaches of planning control, the first enforcement notice had incorrectly specified a different breach of planning control which had not taken place, namely the making of a material change of use of the land without planning permission;
(iv) Likewise, the fact that the positioning of the lodges did not accord with drawing number 04 and that some of the lodges had been used as permanent rather than as holiday accommodation constituted breaches of condition;
(v) Although [the council] could take enforcement action for the breaches of condition, it would be inappropriate to use section 176(1) of [the 1990 Act] to correct the failure in the first enforcement notice to identify the correct breaches of planning control;
(vi) The appeal succeeded under ground (c) and the first enforcement notice was quashed."

The inspector recorded the council's contention that seven of the 12 "before development commences …" conditions", namely conditions 5, 10, 12, 15, 19, 23 and 24, had not been complied with. He concluded that "[whilst] such non-compliance would constitute a breach of planning control, it would not render the planning permission unlawful" (paragraph 24 of the decision letter). And he went on to say (in paragraph 38):

"38. There is no dispute between the parties that certain conditions have been breached. In deciding to quash this notice I do so in the knowledge that the Council has the option to issue either or both an enforcement notice (alleging a breach of condition or conditions) and a Breach of Condition Notice (against which there is no right of appeal), to remedy the breaches of planning control that have occurred at this site."

14. The council's second enforcement notice – issued on 13 July 2011, but withdrawn on 28 October 2011 – did not bear on the preliminary issue before the Tribunal.

15. In the third enforcement notice – issued by the council on 17 November 2011 – the alleged breach of planning control was "[non-compliance] with Conditions 4, 8 and 19 of [the May 2006 planning permission]". The council's reasons for issuing the notice, as they related to condition 19, stated:

> "4. …
>
> Details of the units placed on the site to which this Notice relates have not been agreed and are not considered to be appropriate. Those units on the adjoining site which have been the subject of agreement with [the council] are purpose made holiday lodges of the type envisaged when [the May 2006 planning permission] was granted. The units placed on the site to which the Notice relates are former building site sales offices that have been converted into small living units. These units, as a result of their design, with the hipped roof and double glazed opening doors are almost suburban in appearance and unsuitable to this rural location, particularly when coupled to their more regimented siting.
>
> … It is considered that the type of units placed on the site are inappropriate and detrimental to the character and appearance of the area and in direct conflict with Government and local planning policy."

The notice required, among other things, the cessation of the use of the land "for the siting of residential accommodation units (except for the 2 buildings coloured blue on the attached plan)".

16. The appeal against that enforcement notice was pursued, in the end, on grounds (a), (c) and (f). As the Tribunal said (in paragraph 19 of its decision), Mr Huddlestone accepted that, by the time the notice was issued, the requirements of conditions 4 and 19 had not been complied with – at least for the eight lodges already sited on the land. Those lodges had not been sited in accordance with drawing 04, and the council's approval of the details required by condition 19 had not been sought and obtained. The inspector recorded these facts in his decision letter of 11 May 2012 (in paragraph 7). The ground (c) appeal therefore concerned only the breach of condition 8. That appeal failed. So did the appeal on ground (a). In his conclusions on that appeal the inspector said (in paragraphs 15, 16 and 17):

> "15. … [Given] their location in one corner of the land and the relative openness of the remainder of the land, the lodges appear cramped and incongruously sited.
>
> 16. The incongruity of the appeal development is exacerbated by the form and appearance of the lodges. … The lodges, given their square plan form and pyramidal roofs, look like a regimented series of domestic double garages with glazed panels substituted for garage doors and converted for residential use. In this regard the lodges are urban in character and are significantly out of place in their countryside location.

17. The eight lodges on the enforcement land are incongruous in siting, form and appearance and have had a significant adverse effect on the character and appearance of the countryside. The siting of the lodges on the land conflicts with policy DM4 of the Bassetlaw Core Strategy and the Development Management Policies Development Plan Document. The ground (a) appeal thus fails."

The appeal on ground (f) succeeded only to the extent that the concrete bases for four of the eight lodges were found to be lawfully in place on the land, and the requirements in the enforcement notice were varied accordingly.

*The Tribunal's decision*

17. The Tribunal accepted the submission made on behalf of Mr Huddlestone by Mr Jonathan Wills that the first enforcement notice and the stop notice could simply have prohibited the use of the land for the siting of lodges without complying with the conditions of the May 2006 planning permission – as the third enforcement notice did. But the Tribunal also pointed out that "an appeal against such an enforcement notice could not have succeeded under ground (c) (or indeed ground (b)), so no entitlement to compensation would have arisen under section 186(1) and the effect of section 186(5)(a) would not even need to be addressed" (paragraph 46 of the decision). The landowner's rights under the 2006 planning permission were "granted subject to the 24 conditions which formed an intrinsic part of those rights". The "approvals which [Mr Huddlestone] had to obtain in order to be able to carry out the development without being in breach of planning control, comprised not just the 2006 consent itself, but also the approvals required under the conditions in that consent" (paragraph 47). The inspector's decision of 8 June 2010 had determined that the conditions requiring the approval of details before development commenced were "not pre-conditions to the lawful implementation of the permission nor … did they go to the heart of the planning permission" (see *Hart Aggregates* and *Greyfort Properties Ltd. v Secretary of State for Communities and Local Government* [2011] EWCA Civ 908). The planning permission had been lawfully implemented. But as Mr Wills had accepted, "that was for the sole purpose of deciding that the time limit in condition 1 of the permission had been satisfied". The inspector's decision "went no further in [Mr Huddlestone's] favour than that". Mr Wills accepted that the 2010 appeal decision "rightly contemplated that enforcement action could be taken against development which had already been carried out in breach of condition, as well as future development involving any such breach of planning control". And this was in fact achieved by the third enforcement notice (paragraph 48). The 2010 appeal decision "did not alter the simple and fundamental point that the rights granted by the 2006 consent, and upon which the landowner was entitled to rely during the currency of the stop notice, were subject to the conditions in the permission", including conditions 4, 8 and 19. There was no dispute that a failure to comply with any of these conditions would be a breach of planning control, or that the stop notice did not prevent such approval being obtained (paragraph 49).

18. Mr Wills had argued, in effect, that so long as the necessary approvals could have been obtained at the relevant time this would be enough to prevent section 186(5)(a) from applying. The Tribunal rejected that submission. In its view, the statutory language requires one to look at the "*actual* circumstances" as they were while the stop notice was in force (paragraphs 50 and 51). Mr Wills' argument did not accord with Parliament's intention that a local planning authority "should not be deterred from serving a stop notice by the risk of an error in the related enforcement notice giving rise to a liability for compensation, where that

compensation relates to an activity which is in breach of planning control" (paragraph 52). It also went against the "reality principle" (see *Trocette Property Co. Ltd. v Greater London Council* (1974) 28 P. & C.R. 408, *Inland Revenue Commissioners v Gray* [1994] S.T.C. 360, *Ryde International Plc v London Regional Transport* [2004] EWCA Civ 232, and *Hoare v National Trust* (1999) 77 P. & C.R. 366) (paragraph 53). Like the provision for compensation for the revocation of a planning permission in section 107, section 186 provides compensation for the actual loss suffered at the relevant date, "without departing from reality or postulating hypothetical circumstances" (see *Land and Property Ltd. v Restormel Borough Council* [2004] R.V.R. 303, and *Portland Stone Firms Ltd. v Dorset County Council* [2014] UKUT 0527 (LC)) (paragraph 54).

19. The Tribunal did not accept that its understanding of section 186(5)(a) offended the principle that a statute should not be held to have taken away private rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms (see *Colonial Sugar Refining Co. Ltd. v Melbourne Harbour Trust Commissioners* [1927] A.C. 343). The approvals required under condition 19 and other conditions would have had to be obtained even if the stop notice had not been served (paragraph 55). Mr Wills had submitted that if approvals of the required details had been obtained**,** the stop notice would still have prevented additional lodges being sited on the land in compliance with the details approved. But in those circumstances, once the breach of planning control had been overcome, "the exclusion in section 186(5) will cease to apply". If the statutory requirements are met, the claim for compensation could include losses caused by the stop notice in the period when the prohibited activity no longer constitutes, or contributes to, a breach of planning control. One of the difficulties with the argument put forward on behalf of Mr Huddlestone was that "its effect would be to put [him] in a better position than he would have been in if … he had complied with planning control … or if enforcement action had been taken against him in the way in which he says it should have been" (paragraph 56).

*Did section 186(5) of the 1990 Act exclude the payment of compensation, as the Tribunal held?*

20. Mr Wills' argument before us largely repeated the submissions rejected by the Tribunal. Elaborating on the grounds in the appellant's notice, he submitted that section 186(5)(a) did not exclude the payment of compensation in the circumstances of this case. The requirement in the stop notice to "[cease] the introduction and siting of any further accommodation units" prohibited future development regardless of whether it would be carried out in compliance with the May 2006 planning permission and its conditions. Where, as here, a stop notice prohibits future activity, it cannot be said that such activity "constitutes or contributes to a breach of planning control". Mr Huddlestone could lawfully have carried out the development prohibited by the stop notice. It would not necessarily have been a breach of planning control to do so. In fact, no further "accommodation units" were brought on to the site while the stop notice was in force. It was wrong to assume, however, that if this had been done it would have been in breach of planning control. The planning permission approved the siting of lodges on the land, subject to conditions. But the stop notice prohibited such development even if it had been approved under the conditions imposed. The exclusion of compensation in section 186(5)(a) did not apply to such development. No words needed to be read into the subsection to justify this conclusion. Mr Wills submitted that it is wrong in principle to treat "pre-conditions" differently from other conditions imposed on a planning permission. Section 186(5) can be disapplied even if "pre-conditions" have not been discharged. Compensation can be claimed under section 186 for the lost opportunity to carry

out development in compliance with all applicable conditions, no matter whether they are "pre-conditions" or not. Essentially, therefore, Mr Wills contended that section 186(5) does not prevent a claim for compensation being pursued when a stop notice has been drafted so widely that it prohibits development authorized under a planning permission.

21. For the council, Mr Jonathan Mitchell submitted that the Tribunal's decision was correct. Section 186(5)(a) clearly prevents compensation being paid in a case such as this. Here, as was common ground, for the whole period in which the stop notice was in force – from 19 November 2009 to 8 June 2010 – development that had already been carried out on the site remained in breach of a number of conditions imposed on the planning permission, including conditions 4, 8 and 19. And for the whole of that period, a number of pre-commencement conditions, including condition 19, remained undischarged. The siting of "further accommodation units" on the land at any time in that period, contrary to the prohibition in the stop notice, would therefore have been a breach of planning control. The effect of section 186(5)(a) in these circumstances was to exclude the payment of compensation for any loss attributable to the prohibition.

22. In my view, as Mr Mitchell invited us to accept, the Tribunal was right to conclude and decide as it did. I do not think its reasoning can be faulted.

23. The lawfulness of the stop notice itself is not in question here. No cogent submission was made to the Tribunal, or to us, to the effect that it was not a lawful notice under section 183(1) and (2). Nor has it been challenged in a claim for judicial review.

24. We are concerned with a different question, which goes to the true interpretation of the relevant provisions in section 186 of the 1990 Act – in particular, subsections (2) and (5) – and to their application in the circumstances of this case.

25. The Tribunal's understanding of the provisions of section 186 was, in my view, correct. Subsection (2) creates an entitlement to compensation "in respect of any loss or damage directly attributable to the prohibition contained in the notice …". The meaning of those words seems plain. Such compensation must be for ascertainable loss, and the loss must be "directly attributable" to the prohibition in the stop notice itself, not to some other cause. The scheme for compensation here, as the Tribunal emphasized, is consistent with the "reality principle". It is predicated on there being, in the relevant period, some actual loss, not a hypothetical one. It required the Tribunal to grapple with the circumstances as they actually were while the stop notice was in force, not with some other, imaginary scenario.

26. The meaning of subsection (5)(a) seems equally clear. It excludes compensation being paid for the prohibition in a stop notice of "any activity" that, "when the notice is in force, constitutes or contributes to a breach of planning control". This concept is not difficult, or surprising. The subsection means what it says, nothing more and nothing less. Compensation is not to be paid for an activity prohibited by a stop notice if, while the notice is in force, that activity would be, or would contribute to, a breach of planning control. As the Tribunal pointed out (in paragraph 45 of its decision), a provision to this effect reflects the thinking of Robert Carnwath Q.C., as he then was, in his report of February 1989 "Enforcing Planning Control" – in particular, that "[if] the Act made clear that compensation will not in any circumstances be payable for a use or operation which is in breach of planning control, there would be less concern at the risks of a notice failing on a technicality, and the use of stop notices in appropriate cases would be encouraged" (paragraph 9.5).

27. The Tribunal recognized that there is no need, and that it would be inappropriate, to read words into section 186(5)(a) that Parliament did not choose to insert. In particular, it rightly resisted the suggestion, or implication, in Mr Wills' argument that the provision ought to be construed as if it were inapplicable when the prohibited activity "could" or "might" cease to be – or would not "necessarily" constitute, or contribute to – a breach of planning control. That is not what the subsection provides. It does not distinguish between different breaches of planning control. If Parliament had intended to exempt from the exclusion in section 186(5)(a) compensation for loss caused by a prohibition on development being carried out in breach of a pre-commencement condition, or any other type of planning condition, it could have done so. But it did not. No such gloss on the statutory words can be justified. It is not necessary to clarify statutory language that is neither ambiguous nor opaque. Nor is it necessary to read additional words into the subsection to avoid conflict with the principle that a statute ought not to be construed as taking away property rights without compensation unless the intention to do so is clear. There is no such conflict.

28. From the understanding of section 186(5)(a) urged on us by Mr Wills it would seem to follow that, in a case where the breach of planning control might have been overcome by some approval yet to be granted under a condition, the exclusion of the entitlement to compensation would be disapplied for the whole period when a stop notice was in force. Even if that approval were not granted while the stop notice was in force, or afterwards, the mere possibility of its being granted would be enough. This would have two consequences. First, the exclusion in section 186(5) would be widely disapplied. It would be removed in many cases where a breach of planning control had in fact persisted while a stop notice was in force. Secondly, the predictability and certainty inherent in the statutory scheme for compensation would be largely negated. In many cases hypothetical assumptions would have to be made about an approval that, in fact, was either not sought or sought but not granted in the period when the stop notice was in force.

29. This cannot have been Parliament's intention. It is not what the statutory words say, nor what they imply. A breach of planning control does not cease to be a breach of planning control merely because it can be overcome. And the statutory scheme does not yield an entitlement to compensation for the prohibition by a stop notice of an activity that involves a breach of planning control. I agree with the Tribunal's conclusions to the same effect.

30. In my view, the crucial point in this appeal is simply that, on the day when the stop notice came into force and from then until the day on which it ceased to be in force, the development it required to cease fell within the exclusion in section 186(5). This was so because throughout that period it could be rightly said that such development "constitutes or contributes to a breach of planning control".

31. The effect of the prohibition in the stop notice was to bring about the cessation of an activity described, in clear terms, as "the introduction and siting of any further accommodation units, caravans, chalets and other structures onto the land". Put simply, this was the activity that the stop notice stopped. As paragraph 2 of the notice stated, the council considered it expedient that that activity should cease, before the period for compliance with the enforcement notice issued on 27 October 2009 had occurred. Plainly, therefore, the council believed it was likely to continue in the future if it were not prohibited by a stop notice served at that stage. And this was perfectly understandable, given that the siting of lodges on the land in breach of

several conditions on the May 2006 planning permission had continued for some time – a fact accepted by both appeal inspectors in their decision letters.

32. The fact that the activity identified in the stop notice would involve development that had not already occurred, and the fact that such development might not be in breach of planning control by the time it was carried out, does not matter. The requirement to cease an activity that had already begun, in breach of conditions on the May 2006 planning permission, was, in effect, a prohibition on a continuing activity that, at the time of the service of the stop notice, constituted or contributed to a breach planning control. The requirement to "cease" that activity was appropriate. It was, in effect, a requirement to refrain from continuing to develop the land in breach of planning control. As the Tribunal recognized, however, if the pre-commencement conditions had all been discharged while the notice was in force, the exclusion of compensation in section 186(5)(a) would then have been lifted.

33. But that did not happen. There is no dispute that throughout the period when the stop notice was in force, from 19 November 2009 to 8 June 2010, no details were submitted to the council for approval under condition 19 of the May 2006 planning permission, either for the eight lodges against which the council enforced, or for any further development still to be carried out on the land. Nor is there any dispute that the introduction of any more lodges – or, as it was put in the stop notice, any "further accommodation units" – during that period, without first having complied with the requirements of condition 19 and the other conditions requiring prior approval of details, would have been a breach of planning control. Any development carried out on the land under the May 2006 planning permission in that period would have been in breach of planning control, because outstanding approvals of detail under conditions on the permission had not been sought and obtained. This is not speculation. It is a matter of fact, and not contentious.

34. In the six and a half months during which the stop notice was in force, its requirements were evidently complied with. No additional lodges were brought on to, and sited on, the land. No attempt was made to obtain the council's approval of the outstanding details required under the conditions (cf. the judgment of Woolf L.J. in *F.G. Whitley & Sons Co. Ltd. v Secretary of State for Wales* (1992) 64 P. & C.R. 296, at pp.307 to 309). It may be that those approvals could have been obtained in that period, and further development carried out on the site that would not have been in breach of planning control. The stop notice did not prevent this from being achieved. It did not stand in the way of the necessary approvals being sought, or given. If those approvals had been obtained, the siting of additional lodges on the land would not then have been a breach of planning control.

35. It follows in my view – as the Tribunal concluded and for the reasons it gave – that in this case the exclusion of compensation in section 186(5)(a) did apply, and the appeal must therefore fail.

36. Another way of looking at the case, and with the same result, might be this. The entitlement to compensation under section 186(2) is strictly confined to loss and damage "directly attributable to the prohibition contained in the notice …". In this case, however, it may be said that the "loss", even if there had been any, would not have been "directly attributable" to the prohibition in the stop notice, but to the conditions on the planning permission themselves, the failure of the landowner to seek and obtain the requisite approvals to discharge them in a timely way, and his decision not to carry out any further development in breach of condition while the stop notice was in force. On this analysis too, there would have

been no entitlement to compensation under the statutory scheme. No relevant "loss" occurred.

*Conclusion*

37. For the reasons I have given, I would dismiss the appeal.

**Lady Justice Nicola Davies**

38. I agree.

**Lord Justice Irwin**

39. I also agree.