Neutral Citation Number: [2025] EWHC 365 (Admin)

Case No: AC-2024-LON-001634

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2025

Before :

MR JUSTICE MOULD

- -

Between :

CAPTAIN LEE JONES	**Claimant**
- and -	
SHROPSHIRE COUNCIL	**Defendant**

- -
- -

Leanne Buckley-Thomson (instructed by **Wilkes Partnership LLP**) for the **Claimant**
Ruth Stockley KC (instructed by **Shropshire Council Legal Services**) for the **Defendant**

Hearing date: 5th November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 21st February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

MR JUSTICE MOULD :

Introduction

1. This is an application for judicial review of the decision of the Defendant, Shropshire Council, to issue and serve a CIL stop notice **["the Notice"]** on the Claimant under regulation 90 of the Community Infrastructure Levy Regulations 2010 **["the CIL Regulations"]**. The Defendant issued the Notice on 23 September 2022.

2. The Notice relates to land at Mayfield Farm, Elson, Ellesmere, Shropshire **["the land"]**. The land has the benefit of planning permission granted by the Defendant on 5 June 2015 for the erection of a detached house with triple garage. At the date of service of the Notice, the planning permission had been implemented but the development remained to be completed. The reason given for the decision to issue the Notice was that an amount of Community Infrastructure Levy **["CIL"]** payable in respect of the development remained unpaid. That chargeable amount was stated to be £39,561.43. The Notice took effect on 26 September 2022. It required the cessation of building works at the land from that date onwards and until such date as the Notice may be withdrawn by the Defendant. The Notice stated that full payment of the unpaid chargeable amount was required for the Notice to be withdrawn.

3. The claim for judicial review was issued on 11 November 2022. Permission was refused on the papers and upon renewal but granted on appeal by Popplewell LJ on 18 October 2023. Before me, Ms Leanne Buckley-Thomson represented the Claimant and Ms Ruth Stockley KC represented the Defendant. I am very grateful to them both for their excellent written and oral submissions which have been of considerable assistance to the court.

The ground of challenge

4. The single ground of challenge now pursued by the Claimant is that the Defendant's administrative action in issuing and serving the Notice on 23 September 2022 was time barred by virtue of section 9 of the Limitation Act 1980 **["the 1980 Act"]**. The Defendant had issued and served the Claimant with a demand notice requiring payment of the chargeable amount on 13 August 2015 (the sum demanded being £39,361.43 to which £200 was later added by way of interest). The Claimant's case is 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. By virtue of section 9 of the 1980 Act, such an action may not be brought after the expiration of six years from the date on which the cause of action accrued. The Claimant contends that in the present case, the cause of action accrued upon demand for payment from him of the chargeable amount on 13 August 2015. More than six years had elapsed by the date of issue of the Notice on 23 September 2022. The Defendant issued the Notice after the applicable limitation period had expired.

Statutory background

The community infrastructure levy

5. CIL was introduced by Part 11 of the Planning Act 2008. It is a charge which may be levied by local authorities on new development in their area. CIL provides funding for

local authorities, known in this context as collecting authorities, to use to help them deliver the infrastructure needed to support development in their area. Following a consultation process, a local authority must prepare, approve and publish a charging schedule which sets out its CIL rates.

6. Most new built development, including new dwellings, may be liable to CIL. There are certain exemptions and reliefs. One exemption is provided in respect of self-build housing: see regulation 54A of the CIL Regulations. The procedure for claiming that exemption is stipulated in regulation 54B of the CIL Regulations. Persons who wish to take the benefit of the self-build exemption must ensure that their claims are made in writing on a form published by the Secretary of State (or a form substantially to the same effect) and received by the collecting authority before the commencement of the chargeable development. Regulation 54B(3) of the CIL Regulations states that a claim for self-build exemption will lapse where the chargeable development to which it relates is commenced before the collecting authority has notified the claimant of its decision on the claim.

7. Regulation 67 of the CIL Regulations requires the submission of a commencement notice to the collecting authority no later than the day before the day on which a chargeable development is begun. Regulation 68 of the CIL Regulations requires a collecting authority to determine a deemed commencement date in a case where it believes that either chargeable development has already begun without submission of a commencement notice, or that the date of actual commencement of the development was earlier than as stated in the commencement notice.

8. Regulation 69 of the CIL Regulations provides that a collecting authority must serve a demand notice on each person liable to pay an amount of CIL in respect of a chargeable development. The demand notice must state the amount payable by that person (including any surcharges or interest applied) and the day on which payment of the chargeable amount is due.

9. Regulation 71(2) of the CIL Regulations provides that in a case where the collecting authority has determined a deemed commencement date, the chargeable amount of CIL is payable in full on that date.

Enforcement of community infrastructure levy

10. Part 9 of the CIL Regulations provides for the enforcement of CIL.

11. Chapter 1 (regulations 81 to 88) of Part 9 of the CIL Regulations provides for the imposition of surcharges and payment of interest. In particular, regulation 83 empowers a collecting authority to impose a surcharge equal to 20% of the chargeable amount in respect of a chargeable development or £2,500, whichever is the lower amount, where that development is commenced before the collecting authority has received a valid commencement notice. Regulation 87 permits interest to be charged on late payments.

CIL Stop Notices

12. Chapter 2 (regulations 89 to 94) of Part 9 of the CIL Regulations is headed "CIL Stop Notices". Regulation 89 stipulates the preliminary steps which a collecting authority must take before issuing a CIL stop notice –

"89(1) This regulation applies if -

(a) an amount which has become payable in respect of a chargeable development has not been paid; and

(b) the collecting authority considers it expedient that development should stop until the amount has been paid.

(2) The collecting authority may issue a notice warning of its intention to impose a CIL stop notice ("warning notice") in respect of the chargeable development.

(3) A warning notice must be served on –

(a) the person who is liable for the unpaid amount;

(b) each person known to the authority as an owner of the relevant land;

(c) each person known to the authority as an occupier of the relevant land; and

(d) any other person whom the collecting authority considers may be materially affected by a CIL stop notice.

(4) A warning notice must be in writing and must –

(a) state the date of the notice;

(b) set out the authority's reasons for issuing the warning notice;

(c) state the unpaid amount;

(d) state that payment of the unpaid amount is due in full immediately;

(e) state the period after which a CIL stop notice may be issued if the unpaid amount is not paid (which must not be less than three days or more than 28 days after the warning notice is issued); and

(f) specify the effect of, and possible consequences of failure to comply with, a CIL stop notice.

(5) The collecting authority must display a copy of the warning notice on the relevant land".

13. Regulation 90 of the CIL Regulations confers the power on a collecting authority to issue and serve a CIL stop notice –

"90(1) This regulation applies if –

(a) the collecting authority has issued a warning notice in respect of a chargeable development; and

(b) the amount specified in the warning notice is unpaid (in whole or in part) at the end of the period specified in the notice.

(2) The collecting authority may serve a CIL stop notice in respect of the chargeable development.

(3) A CIL stop notice must be served on –

(a) the person who is liable to pay the unpaid amount;

(b) each person known to the authority an owner of the relevant land;

(c) each person known to the authority as an occupier of the relevant land; and

(d) any other person whom the collecting authority considers may be materially affected by the CIL stop notice.

(4) The CIL stop notice must be in writing and must –

(a) state the date on which it is to take effect;

(b) set out the authority's reasons for issuing the notice;

(c) state the unpaid amount;

(d) state that payment of the unpaid amount is due in full immediately;

(e) specify the relevant activity which must cease; and

(f) specify the possible consequences of failure to comply with the notice.

(5) In paragraph (4)(e) "relevant activity" means any activity connected with the chargeable development which is specified in the CIL stop notice as an activity which the collecting authority requires to cease, and any activity carried out as part of that activity or associated with that activity.

(6) The collecting authority must display a copy of the CIL stop notice on the relevant land.

(7) A CIL stop notice does not prohibit any works on the relevant land which are necessary in the interests of health and safety.

(8) A CIL stop notice has effect from the date specified in the notice until the date it is withdrawn by the collecting authority".

14. Regulation 91 provides for the withdrawal of a CIL stop notice –

"91(1) A collecting authority may withdraw a CIL stop notice at any time (without prejudice to its power to issue another) by serving written notice to that effect on the persons served with the CIL stop notice.

(2) A collecting authority must withdraw a CIL stop notice when the unpaid amount stated in the notice is paid in full to the collecting authority.

(3) A collecting authority which withdraws a CIL stop notice must display a notice of the withdrawal on the relevant land in place of the CIL stop notice.

(4) A CIL stop notice ceases to have effect on the day the collecting authority serves notice of its withdrawal".

15. Regulation 92 of the CIL Regulations requires the issue of a CIL stop notice and specified information in relation to that notice to be included on the local authority's planning register as soon as practicable and in any event before 14 days have elapsed since the issue of the notice –

"92(1) The register kept under section 188 of TCPA 1990 (register of enforcement and stop notices) must, in addition to the information specified in subsection (1) of that section, include the following information in respect of every CIL stop notice issued in relation to land in the area of the authority maintaining the register -

(a) the address of the land to which the notice relates or a plan by reference to which its location can be ascertained;

(b) details of the relevant planning permission sufficient to enable it to be identified;

(c) the name of the collecting authority;

(d) the date of issue of the notice;

(e) the date of service of the notice;

(f) the date specified in the notice as the date on which it is to take effect; and

(g) a statement or summary of the activity prohibited by the notice".

16. All entries relating to a CIL stop notice are to be removed from the register if the notice is withdrawn or quashed. By virtue of regulation 92(3), in a case where the collecting authority does not itself maintain the planning register, that authority must notify the requisite information about the issued CIL stop notice (and, if later withdrawn or quashed, that information), to the local authority responsible for the planning register for the land to which the notice relates.

17. By virtue of regulation 93(1)(a) of the CIL Regulations, a person commits an offence if they contravene a CIL stop notice which has been served on them. By virtue of regulation 93(5), it is a defence for that person to prove that the CIL stop notice was not served on them; and that they did not know, and could not reasonably have been expected to know, of the notice's existence.

18. Regulation 94 of the CIL Regulations empowers the court on the application of the collecting authority to grant an injunction restraining an actual or apprehended breach of a CIL stop notice.

19. Section 119 of the CIL Regulations provides for an appeal against the issue of a CIL stop notice on limited grounds –

"119(1) A person who is aggrieved at a decision of a collecting authority to impose a CIL stop notice may appeal to the appointed person on either (or both) of the following grounds -

(a) that the collecting authority did not serve a warning notice before imposing the CIL stop notice; or

(b) that the chargeable development in respect of which the CIL stop notice was imposed has not commenced.

(2) A CIL stop notice which is subject to an appeal under this regulation continues to have effect while the appeal is outstanding.

(3) An appeal under this regulation must be made before the end of the period of 60 days beginning with the day on which the CIL stop notice takes effect.

(4) On an appeal under this regulation the appointed person may –

(a) correct any defect, error or misdescription in the CIL stop notice; or

(b) vary the terms of the CIL stop notice,

if the appointed person is satisfied that the correction or variation will not cause injustice to the appellant or any of the interested parties.

(5) Where an appeal under this regulation is allowed the appointed person may quash the CIL stop notice".

Recovery of CIL – liability orders

20. Chapter 3 (regulations 95 to 107) of Part 9 of the CIL Regulations enacts arrangements for the recovery of an amount of CIL which has become payable to a collecting authority and has not been paid through court proceedings. Those arrangements are, I think, broadly based on the well-established system for the recovery of non-domestic rates enacted by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989.

21. Regulation 97 empowers a collecting authority to apply to a magistrates' court for a liability order against the person by whom the unpaid amount of CIL is payable. If a liability order is made by the magistrates' court, the amount in respect of which it is made becomes enforceable in accordance with the provisions of chapter 3 of Part 9 of the CIL Regulations. The collecting authority may levy the unpaid amount by taking control of goods (regulation 97), by distress (regulation 98), and may apply for a warrant of commitment (regulation 100). Provision is made for the imposition of charging orders (regulation 103).

22. In the alternative to pursuing recovery through an application for a liability order in a magistrates' court, the collecting authority is empowered to bring a claim for an unpaid amount of CIL which has become payable in a court of competent jurisdiction (regulation 106).

23. Regulation 97(3) of the CIL Regulations enacts a time limit within which a collecting authority must apply to a magistrates' court for a liability order –

"Section 127(1) of the Magistrates' Courts Act 1980 (limitation of time) does not apply to such an application; but no application may be instituted in respect of an outstanding amount after the period of six years beginning with the day that amount became due".

Limitation of action – the 1980 Act

24. Section 1 of the 1980 Act states –

"1(1)This Part of this Act gives the ordinary time limits for bringing actions of the various classes mentioned in the following provisions of this Part.

(2)The ordinary time limits given in this Part of this Act are subject to extension or exclusion in accordance with the provisions of Part II of this Act".

25. The time limit upon which the Claimant relies in the present claim is that provided in section 9(1) of the 1980 Act –

"9(1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued".

26. Section 38 of the 1980 Act headed "Interpretation" includes the following provisions –

"38(1) In this Act, unless the context otherwise requires -

"action" includes any proceeding in a court of law, including an ecclesiastical court (and see subsection (11) below);

...

(11) References in this Act to an action do not include any method of recovery of a sum recoverable under –

(a) Part 3 of the Social Security Administration Act 1992;

(b) section 127(c) of the Social Security Contributions and Benefits Act 1992, or

(c) Part 1 of the Tax Credits Act 2002,

other than a proceeding in a court of law".

27. Subsection 38(11) of the 1980 Act was inserted by the Welfare Reform Act 2012.

Factual background

28. The Claimant occupies the existing farmhouse at the land as his residence. He is the beneficial owner of the land.

29. The Claimant proposed to carry out the development authorised by the planning permission himself and to rely upon the self-build exemption from liability to CIL under regulation 54A of the CIL Regulations.

30. On 10 July 2015 the Claimant notified the Defendant by email of his intention to begin the development on the following day, 11 July 2015. The Defendant acknowledged that email. Although the Claimant intended his email of 10 July 2015 to be proper notice of his reliance on the self-build exemption, he did not complete or submit the requisite form under regulation 54B of the CIL Regulations.

31. On 13 August 2015 the Defendant notified that date as the deemed commencement date for the development and issued a demand notice requiring immediate payment of the chargeable amount in the sum of £39,361.43 (including a surcharge of £2,500). In ensuing correspondence, the Claimant said that he had intended his email of 10 July 2015 to be notice of his commencement of the development in reliance on the self-build exemption. The Defendant did not question that was his intention but insisted that the statutory procedure laid down by regulation 54B must be complied with and that the Claimant had failed to do so. Consequently, he was not able to rely on the self-build exemption and was liable for CIL in the amount demanded of him.

32. There then followed an extensive period of correspondence between the parties (the Claimant having instructed solicitors and taken advice from counsel). On 27 January 2017, the Defendant issued a fresh demand notice so as to enable the Claimant to pursue an appeal, which he did, under regulations 117 and 118 of the CIL Regulations against the deemed commencement date and the imposition of the surcharge. The fresh demand notice differed from the notice issued by the Defendant on 13 August 2015 only in that it included the demand for interest in the sum of £200, resulting in the chargeable amount of £39,561.43 now stated in the Notice.

33. On 8 August 2017 the person appointed to determine the Claimant's statutory appeals, a planning inspector, issued his decision allowing the appeal. However, this court (Mr CMG Ockleton, Vice President of the Upper Tribunal, sitting as a Judge of the High Court) subsequently quashed the inspector's decision: see R (Shropshire Council) v Secretary of State for Communities and Local Government [2019] EWHC 16 (Admin). The Claimant was refused permission to appeal by Lindblom LJ on 10 September 2019.

34. On 25 February 2021, the Defendant applied to Telford Magistrates Court for a liability order to be made against the Claimant under regulation 97 of the CIL Regulations. On 1 July 2021 the district judge made a liability order. The Appellant appealed to this court by way of case stated. On 5 April 2022 Steyn J allowed the Claimant's appeal: see Lee Jones v Shropshire Council [2022] EWHC 1103 (Admin).

35. It is not in dispute between the parties that, following the decision of this court on 5 April 2022, the Defendant was not in a position lawfully to make a fresh application for a liability order against the Claimant. That was the effect of regulation 97(3) of the CIL Regulations, which prohibited the Defendant as collecting authority from making an application for a liability order after 13 August 2021, the date of expiry of the period of six years beginning with the date on which the unpaid CIL had been demanded and become due.

36. In the meantime, the development authorised by the planning permission had yet to be completed on the land. On 11 May 2022, the Defendant issued and served a CIL warning notice on the Claimant pursuant to regulation 89(1) of the CIL Regulations, stating that a CIL stop notice may be issued on or after 19 May 2022, unless full payment of the unpaid chargeable amount in the sum of £39,561.43 was not received by 18 May 2022. Payment was not received by the Defendant, who on 26 August 2022 issued and served a second CIL warning notice on the Claimant. That warning notice stated that a CIL stop notice may be issued on or after 10 September 2022, unless full payment of the unpaid chargeable amount in the sum of £39,561.43 was received by 9 September 2022. No such payment was received by the Defendant.

The Notice

37. On 23 September 2022 the Defendant issued and served the Notice on the Claimant. The Notice prohibited all works on the land not already carried out in relation to planning permission 14/05016/FUL – Erection of a detached house dwelling and triple garage, giving details of specific activities and building works which must now cease. The Notice took effect on 26 September 2022. The stated reasons for issuing the Notice were as follows –

"A CIL Liability has arisen in relation to this development. The chargeable amount of £39,561.43 (including late payment surcharges) remains unpaid. Payment of this unpaid chargeable amount is due in full immediately. The Council considers it expedient that development should cease until this chargeable amount has been fully paid to the Council.

The Council issued a CIL Warning Stop Notice on 26 August 2022 to confirm its intention to impose a CIL Stop Notice under Regulation 90, but the chargeable amount of £39,561.43 still remains unpaid".

The Notice then stated –

"For this CIL Stop Notice to be withdrawn, full payment of the unpaid chargeable amount in the sum of £39,561.43 must be made in full to the Council immediately".

Submissions

38. For the Claimant, Ms Leanne Buckley-Thomson submitted that the issue of a CIL stop notice in the exercise of the powers conferred on a collecting authority by regulation 90 of the CIL Regulations is an action to recover a sum recoverable by virtue of an enactment, and so subject to the time limit imposed by section 9 of the 1980 Act.

39. It was submitted that the Defendant's action in issuing the Notice in the present case was in order to recover unpaid CIL in the sum stated in the Notice. That sum was the chargeable amount demanded by the Defendant on 13 August 2015 (plus interest). It was payable in full under regulation 71(2) of the CIL Regulations. It fell due on that date and from that date onwards was recoverable by virtue of the CIL Regulations. Counsel submitted that the Defendant's action to recover that sum by issuing the Notice on 23 September 2022 was time barred by virtue of section 9(1) of the 1980

Act, since it was brought more than six years after the sum fell due on 13 August 2015.

40. It was submitted that the ordinary, natural meaning of *"action"* in the context of section 9 of the 1980 Act includes administrative action by a local authority exercising statutory powers and which is contemplated by the governing statute. When exercising its powers under regulation 90 of the CIL Regulations a collecting authority issues a CIL stop notice, it does so for the clear purpose of recovering a sum of money which is recoverable by virtue of the CIL Regulations. The power to issue a CIL stop notice is contingent upon there being an amount of CIL which is unpaid at the end of the period specified in the warning notice served under regulation 89 of the CIL Regulations. Regulation 89 applies if an amount which has become payable in respect of a chargeable development has not been paid. That sum is recoverable by virtue of the CIL Regulations. In issuing a CIL stop notice, a collecting authority is bringing an action to recover that sum.

41. For the Defendant, Ms Ruth Stockley KC submitted that the Claimant's reading of section 9(1) of the 1980 Act as extending to impose a time limit on the issue of a CIL stop notice cannot be sustained. Although taken out of its statutory context in the 1980 Act, the word *"action"* can embrace administrative action taken by a local authority in the exercise of statutory powers, it cannot bear that meaning when read in the context of section 9(1) of the 1980 Act and of that Act read as a whole.

42. Ms Stockley KC pointed to section 1 of the 1980 Act, which imposes various time limits on bringing different classes of action. Part 1 of the 1980 Act imposes time limits for actions founded on tort, on simple contract, in respect of negligence causing personal injuries and so forth. These are actions involving the bringing of legal proceedings. That is the context in which the phrase *"an action brought"* to recover any sum must be understood. The language used in section 9(1) of the 1980 Act, including the reference to a *"cause of action"*, has the ordinary and natural meaning in this statutory context of bringing legal proceedings. It was submitted that the act of a collecting authority in issuing a CIL stop notice in the exercise of its powers under regulation 90 of the CIL Regulations is not to be understood to be the bringing of an action within the meaning of section 9(1) of the 1980 Act. It is a public administrative act, which does not depend for its efficacy upon the bringing of legal proceedings.

Discussion

43. In order to resolve these competing arguments, it is necessary to begin with the established approach taken by the court in interpreting statutory language. In R (O) v Secretary of State for the Home Department [2023] AC 255 at [29] the Supreme Court said –

> *"The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated:*
>
> *"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context."*

(R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] AC 349, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained".

44. I accept at the outset that as a matter of ordinary language, administrative action taken by a local authority in the exercise of its statutory powers for the purpose of coercing payment of a sum lawfully due from a citizen can be described as action to recover that sum. The question is whether the phrase *"an action to recover any sum recoverable by virtue of any enactment"* in section 9(1) of the 1980 Act was intended to apply to such administrative action, or to have a more limited application which excluded administrative action of that kind.

45. That question is to be considered by interpreting the phrase both in the context of section 9(1) of the 1980 Act and in the wider context of the 1980 Act as a whole.

46. Section 9(1) of the 1980 Act is concerned with setting a time limit within which *"an action"* must be *"brought"*. That time limit is set by reference to *"the date on which the cause of action accrued"*. Those are conventional concepts in the context of legal proceedings. I note that section 151 of the Senior Courts Act 1981 provides the following definitions of *"action"* and *"cause"* –

""action" means any civil proceedings commenced by writ or in any manner prescribed by rules of court.

""cause" means any action or any criminal proceedings".

47. I turn to the wider context set by the 1980 Act. By virtue of section 1(1) of the 1980 Act, section 9(1) is one of the ordinary time limits given in Part 1 for bringing *"actions of the various classes mentioned in the following provisions of this Part"*. Those classes of actions are a variety of legal proceedings in which the party or parties bringing the action must do so though legal proceedings begun in a court or tribunal. In the absence of settlement or resolution through some form of alternative dispute resolution, the party or parties bringing the action will require a court or tribunal to make an order or decision in those legal proceedings in order to obtain a remedy. The legislative purpose of Part 1 of the 1980 Act is to set time limits within which various stated classes of legal proceedings must be begun.

48. Section 38(1) of the 1980 Act widens the definition of *"action"* in the Act to include *"any proceedings in a court of law including an ecclesiastical court"*. Those words were included in section 31(1) of the Limitation Act 1939, one of the limitation statutes which the 1980 Act was enacted to consolidate. They were considered by a strong Divisional Court in China v Harrow Urban District Council [1954] 1 QB 178.

49. In *China's* case, the question was whether the statutory predecessor to section 9(1) of the 1980 Act, that is to say section 2(1)(d) of the Limitation Act 1939, applied to set a time limit within which a rating authority must bring rate recovery proceedings in a

magistrates' court in the form of an application for a distress warrant. At page 183, Lord Goddard CJ said that it was settled law that no action lay for the recovery of rates and that the only procedure available to the rating authority was to apply to the justices for a distress warrant. He held that an application for a distress warrant was nevertheless subject to the time limit enacted by section 2(1)(d) of the 1939 Act as although not an action, it was a proceeding in a court of law to recover a sum recoverable by virtue of an enactment. He concluded with the following observation about the widened definition of *"action"* then found in section 31(1) of the 1939 Act –

"But when I find reference both to ecclesiastical courts and to all classes of arbitration in the present Act it leads me to think that the legislature meant to bring every class of litigation, before whatever tribunal it might come, within the ambit of the statute".

50. At page 187 in *China's* case, Sellers J said –

"The definition in the Act was obviously intended to enlarge the more normal meaning of action and I do not think the context of section 2 does require that the definition of "action" should not be applied to it. If the definition is applied, then the section should be read to provide that the following proceedings in a court of law should not be brought after the expiration of six years from the date on which the cause of proceedings in the court of law accrued, that is to say, (d) proceedings in a court of law to recover any sum recoverable by virtue of any enactment. That interpretation seems to me to be in harmony with the context, not repugnant to it".

51. Havers J also saw the definition of *"action"* that is now found in section 38(1) of the 1980 Act as widening the normal meaning of that word in the context of a statute concerned with imposing time limits on stale legal claims. At page 190 he said –

"The wide words of the definition in the Limitation Act 1939, show that it was intended to bring within the ambit of section 2 proceedings to which the term "action" would not normally be appropriate".

52. All members of the court in *China's* case considered that the purpose of the definition of *"action"* now enacted in section 38(1) of the 1980 Act was to extend that word beyond its ordinary meaning, in the context of a statute prescribing time limits for bringing classes of actions, to include any proceedings in a court of law. In other words, the legislative intention was to limit the period within which any proceedings brought in a court of law must be begun, whether or not those proceedings fell within the ordinary definition of an action.

53. Applying that analysis to the class of action now described in section 9(1) of the 1980 Act, the class of action for which a time limit of six years is prescribed in that section is concerned extends to include any proceedings brought in a court of law to recover sums recoverable by virtue of an enactment. In the modern courts system, I would accept that the class may extend also to proceedings brought in a tribunal for that purpose.

54. However, the reasoning of the court in *China's* case does not provide any support to the Claimant's contention that in the context of section 9(1) of the 1980 Act or the

wider legislative context of Part 1 of that Act, an *"action"* brought to recover a sum recoverable by virtue of an enactment extends to include an administrative act by a public authority exercising statutory powers, which is not dependent upon or done in the context of bringing legal proceedings in a court or tribunal. Such an administrative act is not one which falls within the ordinary meaning of an action brought in a court of law following the accrual of a cause of action. Nor does such an administrative act fall within the extended definition now enacted under section 38(1) of the 1980 Act. It is not properly to be characterised as a proceeding in a court of law.

55. I acknowledge that in *China's* case the court was not faced with the question whether the time limit now imposed by section 9(1) of the 1980 Act extended to administrative action to recover a sum taken by a public authority exercising statutory powers. That case was concerned with rate recovery proceedings in a magistrates' court. To some degree, the case turned on the old rule that no action would lie to recover unpaid rates.

56. Nevertheless, in that case the court founded its decision on the proposition that in the context of the limitation acts, an *"action"* bears its ordinary legal meaning of a form of proceedings in a court of law. The purpose of the definition now enacted in section 38(1) of the 1980 Act was to extend its meaning to any proceeding in a court of law. Neither that extended definition nor the reasoning of the Divisional Court in *China's* case suggest that it extends to administrative action in the exercise of statutory powers which is not brought in a court of law. There is nothing in either section 9 or Part 1 of the 1980 Act which supports the contention that the time limit in section 9(1) was intended to apply to such administrative action.

57. Ms Buckley-Thomson relied on the insertion of subsection 38(11) of the 1980 Act as evidence of just such an intention. She submitted that was an exclusive definition whose purpose was to narrow the meaning of *"action"* in section 9 of the 1980 Act. It was inserted by Parliament because it recognised that otherwise, on the natural meaning of *"action"*, section 9(1) of the 1980 Act did extend to action to recover sums recoverable under statutory powers other than by proceedings in a court of law.

58. I accept that subsection 38(11) of the 1980 Act is an exclusive definition. However, whilst it is correct that Parliament may enact an exclusive definition in order to narrow the ordinary meaning of a defined term, it may also do so for the purpose of clarifying potential doubt about what is excluded. See Bennion, Bailey and Norbury on Statutory Interpretation (8th edition) at section 18-3.

59. Subsection 38(11) of the 1980 Act was inserted by section 108 of the Welfare Reform Act 2012. The long title of the Welfare Reform Act 2012 states that it was an Act *"to make provision for universal credit and personal independence payment; to make other provision about social security and tax credits;… and for connected purposes"*. Section 108 is one of a number of general provisions in respect of social security enacted in Part 5 of that Act. The social security and tax credit systems which are identified in subsection 38(11)(a)-(c) of the 1980 Act include a number of administrative methods of recovery of overpaid social security benefits and tax credits. In the context of the complexities of legislation concerning social security payments, it is easy to understand that Parliament would seek to assist in the effective recovery of overpaid social security payments by legislating to avoid any potential doubt or dispute as to whether their recovery was subject to limitation of action under the 1980 Act.

60. Given that subsection 38(11) of the 1980 Act was inserted for the purpose of providing clarity and certainty in the application of the limitation periods in that Act to the specific circumstances of social security legislation, I do not consider that it assists in understanding the meaning of an *"action"* in section 9(1) of the 1980 Act. By inserting subsection 38(11) into the 1980 Act, Parliament has avoided any doubt as to whether references in that Act to an action include any method of recovery of a sum recoverable under the specified social security legislation, other than a proceeding in a court of law. It does not follow that any such method of recovery under one of those specified social security enactments falls within the ordinary meaning of an action in the context of the 1980 Act. Still less does it follow that any administrative action taken by a public authority for the purpose of enforcing payment of a sum recoverable under any enactment falls within the ordinary meaning of an action in the context of the 1980 Act. It is far too great a leap of logic to infer from the insertion of subsection 38(11) that where the words *"an action"* are used in section 9(1) of the 1980 Act, they are intended to extend generally to embrace any administrative action taken by a public authority exercising its statutory powers to enforce payment of a sum which is recoverable by virtue of an enactment.

61. 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. In that case the applicants, the Customs and Excise Commissioners, had levied distress on a company's goods which later had been sold at auction. The company's liquidator was of the view that the proceeds of sale should be released to him pursuant to the winding up order. The applicants sought an order that the proceeds of sale must be released to them pursuant to section 231 of the Companies Act 1948.

62. Section 231 of the Companies Act 1948 provided –

"When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose".

63. At page 94H, Mervyn Davies J referred to the following passage in the speech of Lord Russell of Killowen in In re Herbert Berry Associates Ltd [1977] 1 WLR 1437, 1448 –

"My Lords, I share with Oliver J his surprise in In re Bellaglade Ltd [1977] 1 All ER 319 that a distraint, whether by a landlord or by the Crown in this case, is properly to be regarded as a 'proceeding' within section 226 [of the Companies Act 1948]. If I were to consider the question de novo I would say that it was not, though I need not set out my reasons. There is a consistent stream of authority over a long period of time based upon the assumption that for present purposes a distress when levied is a proceeding, a stream which it is not sensible to assume Parliament did not observe and adopt in the series of re-enactments of company law, and for that reason the Crown did not contest the point in this appeal".

64. In *Memco* at page 94H Mervyn Davies J said –

"In the face of those words…, it is not open to me to say that the distress in this case is not an "action or proceeding" within section 231, section 231 being placed so near to section 226 in the same part of the same Act. It follows that the wording of section 231 had the effect, when the winding up order was made, of requiring the commissioners not to sell the distrained goods without the leave of the court".

65. As is evident from those passages, the treatment of levying distress in that specific statutory context as being an *"action or proceeding"* had become long established by authority. Lord Russell's observations show that both he and Oliver J (later Lord Oliver of Aylmerton) were surprised that this rule had become established. In my judgment, the existence of that surprising line of authority in the highly specific context of company legislation does not shed any meaningful light on the question raised in the very different context of the 1980 Act in the present case. It would be idle to suggest that Parliament had intended, when using the term *"action"* in consolidating enactments for the limitation of actions in the 1980 Act, that it should be interpreted by reference to a line of authority which had developed in the context of the Companies Acts.

66. Ms Buckley-Thomson 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. She pointed out that not all development is carried out to its completion. She drew the contrast with the time limit imposed under regulation 97(3) of the CIL Regulations on making an application to a magistrates' court for a liability order. She submitted that the court should be slow to conclude that Parliament intended that the power to issue a CIL stop notice conferred under regulation 90 of the CIL Regulations should remain available without any limit of time.

67. In my judgment, these concerns are overstated. The power to issue a CIL stop notice has been given to collecting authorities so that they are able effectively to enforce payment of unpaid CIL against a developer without the need to pursue recovery proceedings in the courts. There is a clear incentive on the collecting authority to act in a timely way, since the coercive effect of the CIL stop notice is likely to be stronger at an early stage in the carrying out of the development. It is to be expected that the developer will feel constrained to take steps to clear the unpaid amount of CIL, in order to enable them to continue with the development and so realise their investment. This is consistent with the evident, broader policy objective that enforcement of payment of CIL due in respect of development should be effective, so that the funds are available to meet the cost of local community infrastructure in accordance with the local authority's published schedule.

68. It is clear that 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 (or a court of competent jurisdiction). The power to issue a CIL stop notice 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. It is likely in most cases to depend for its coercive effect upon the development being at a relatively inchoate state of

progress. The present case is unusual, in my view, in that a relatively modest scheme of development for the construction of a single dwelling remains incomplete so many years after building works began.

69. Section 119 of the CIL Regulations provides limited grounds of appeal against a CIL stop notice. However, the decision to issue a CIL stop notice in any given case is amenable to challenge by way of judicial review, in accordance with the time limits prescribed under Part 54 of the Civil Procedure Rules. By virtue of regulation 89(1) of the CIL Regulations the collecting authority must be satisfied in any case that it is expedient that development should stop until the amount of unpaid CIL has been paid. The collecting authority must state their reasons for issuing a CIL stop notice, both in the warning notice served pursuant to regulation 89 of the CIL Regulations and in the CIL stop notice itself. If a case were to arise in which a collecting authority issued a warning that they intended to issue a CIL stop notice to enforce payment of a modest and residual unpaid sum of CIL many years after the development had been largely carried out, the recipient of that warning notice would be in a position to question the expediency of doing so and, in principle, to challenge the subsequent issue of a CIL stop notice on public law grounds.

70. The registration requirements imposed by regulation 92 of the CIL Regulations are plainly intended to minimise the risk of a purchaser of all or part of an incomplete development which is subject to an extant CIL stop notice being unable through proper inquiry to find out about the notice. In the event that such a purchaser was genuinely innocent of the existence of the notice notwithstanding proper inquiry and carried out works in contravention of the notice, they would be able to avail themselves, if prosecuted, of the statutory defence under regulation 93(5) of the CIL Regulations.

Conclusion

71. For the reasons I have given, I conclude 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. The Defendant's administrative action in issuing the Notice on 23 September 2022 was not time barred by virtue of section 9 of the 1980 Act.

72. In the light of that conclusion, it is unnecessary for me to determine the consequential question whether the issue of the Notice was an action *"to recover any sum"* within the meaning of section 9(1) of the 1980 Act. Suffice it to say that I saw some force in the submissions advanced on behalf of both parties on that question, and for that reason think it preferable to leave it to be considered in an appropriate case in which it falls directly for determination.

Disposal

73. For the reasons I have given, this claim for judicial review is dismissed.