

## **Primary Authority determination summary**

Date of determination: 10 February 2015

Applicant (enforcing authority): Kingston upon Hull City Council

Primary authority: Newcastle City Council

Business: Greggs plc

### **Summary**

Kingston upon Hull City Council made an application to BRDO for consent to a reference for determination in connection with advice issued by Newcastle City Council.

Section 20 of the Local Government (Miscellaneous Provisions) Act 1976 (the '1976 Act') focuses on the provision of sanitary appliances in certain establishments. The key question in this case was the correct interpretation of section 20 of the 1976 Act, in particular the definition of 'relevant place' in section 20(9).

The Secretary of State was satisfied that the Primary Authority Advice issued by Newcastle City Council was 'correct' for the purposes of Schedule 4, Paragraph 1(3) of the Regulatory Enforcement and Sanctions Act 2008) because:

1. the advice was soundly based upon the purpose and content of the disputed provision, and represented an informed and professional view of the law;
2. it was consistent with relevant case-law; and
3. evidence demonstrated that since June 2011 the advice issued by Newcastle City Council has been accepted by other local authorities as reflecting a reasonable and proportionate interpretation of section 20 of the 1976 Act.

The direction of the Primary Authority was therefore confirmed.

### **Update following Judicial Review**

The decision by the Secretary of State to confirm the direction of the primary authority was overturned by the High Court following an application for a judicial review by Kingston upon Hull.

The court ruled that a Gregg's 'on the go' premises with fewer than 10 customer seats would class as a 'relevant place' for the purposes of the Local Government Miscellaneous Provisions Act 1976 and, as such, enforcing authorities have the discretionary power to serve a notice under s.20 of the act requiring the provision of WC facilities.

However, the court also stated that a primary authority may give guidance to enforcing local authorities on the exercise of their power under s.20 of the act and that the advice should be followed unless the enforcing local authority has good reason not to.

Furthermore, the court stated that if the Primary Authority Advice is not followed by an enforcing local authority, the primary authority may exercise its powers under part 2 of RESA and block the proposed enforcement action.

Newcastle City Council has amended its Primary Authority Advice to Greggs accordingly.