*196 Miller-Mead v Minister of Housing and Local Government and Another.

Mixed Judicial Consideration

Court
Court of Appeal

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Court of Appeal

Lord Denning M.R. , Upjohn and Diplock L.JJ.

1962 Dec. 6, 7, 10, 11, 12.

Town Planning—Enforcement notice—Appeal to Minister—Notice invalid in part—Error in recital —Variation of notice by Minister—Whether variation permissible—Whether notice as varied valid — Caravan Sites and Control of Development Act, 1960 (8 & 9 Eliz. 2, c. 62), s. 33 (5) (6) .

Town Planning—Enforcement notice—Form—Recital of charge of use without planning permission—Whether permission under Order of 1950 is permission under Part III of the Act of 1947—Validity of enforcement notice— Town and Country Planning General Development Order, 1950 (S.I. 1950 No. 728), art. 3 (1), Sch. I, Class IV, 2 — Town and Country Planning Act, 1947 (10 & 11 Geo. 6, c. 51), s. 23 (1) . *197

From 1926 until 1942 the owner of land "A" had on it a residential caravan. In 1942 that caravan was removed and thereafter the land continuously had on it caravans for repair, storage or sale. In 1955 the landowner also placed on land "A" caravans for human habitation. By permission dated December 20, 1954, the planning authority granted to the landowner permission "for the parking of caravans" on land "A," subject to the condition that the permission was granted only for the period expiring on December 21, 1956. The landowner increased to 10 the number of residential caravans on land "A." Land "B" also owned by him lying to the rear of land "A" was scrub land and was used from July, 1959, by the caravan dwellers for recreational purposes.

On December 28, 1960, the planning authority served an enforcement notice dated December 20, 1960, in respect of land "A" under section 23 of the Town and Country Planning Act, 1947 , [1] and the Caravan Sites and Control of Development Act, 1960 . The notice recited that the land was being used "for the purpose of parking caravans" and that such user was in contravention of the condition in the permission of December 20, 1954. The notice required the landowner "to remove the caravans from the site and discontinue the use of the site for the parking of caravans."

By an enforcement notice of March 24, 1961, which recited that land "B" was being used as a caravan site, which constituted development carried out "without the grant of planning permission," the planning authority required the discontinuance of such user. The landowner relied on the Town and Country Planning General Development Order, 1950 , [2] which authorises the use of land for any purpose for 28 days.

The site owner appealed to the Minister against both enforcement notices under section 33 of the Caravan Sites and Control of Development Act, 1960 . [3] The Minister, after an inquiry, found, ***198** in respect of land "A," that the recommencement in 1955 of the use for parking a residential caravan constituted development for which planning permission was required, and directed that the enforcement notice should be varied so that the user complained of should read "the purpose of parking residential caravans," and the operative part should read "remove from the site all caravans used for the purpose of human habitation and discontinue the use of the site for the parking of caravans used for the said purposes." The Minister found that since about July, 1959, land "B" had been used as a recreation ground for caravan residents, and directed that the enforcement notice in respect of that land should be varied to allege that land "B" was being used as "part of" a caravan site. The Minister decided to uphold both notices as varied.

The Divisional Court held that the enforcement notice relating to land "A" was valid, so far as it related to caravans used for ***199** residential purposes, and that the Minister was entitled to vary it under section 33 (6) of the Caravan Sites and Control of Development Act, 1960 , but the court allowed the appeal in respect of the enforcement notice relating to land "B" on the ground that that notice was based on a falsity inasmuch as planning permission for 28 days was granted by the Order of 1950. On appeal:-

Held:

(1) that the phrase "the parking of caravans" in the planning permission of December 20, 1954, included the parking of caravans for human habitation. A planning permission runs with the land and cannot be cut down by reference to the application pursuant to which it was granted (post, pp. 215, 216, 224, 240).

(2) That subsections (1) and (2) of section 23 of the Town and Country Planning Act, 1947 , remained in force and section 33 of the Caravan Sites and Control of Development Act, 1960 , had not laid down an entirely new code (post, pp. 219, 232, 239).

(3) That for an enforcement notice to be valid it must "appear" to the planning authority that there has been a breach of the law in that either (a) there has been development without permission, or (b) that there has been a failure to comply with a condition or limitation subject to which permission was given. Secondly, the enforcement notice must specify which of those two breaches is "alleged" to have taken place and it must specify the steps to be taken to remedy it. Thirdly, if it is shown that there was no such breach as alleged, the notice may be quashed. Fourthly, if the terms of the notice require more to be done than is necessary to remedy the breach, the notice can be cut down by amending it (post, pp. 219, 225, 226, 234, 235).

(4) That the Minister has power under section 33 (5) of the Act of 1960 to correct any informality, defect or error in an enforcement notice if he is satisfied that the informality, defect or error is not a material one. Applied to misrecitals, that meant that if the misrecital went to the substance of the matter, the notice must be quashed but if the misrecital did not go to the substance and could be amended without injustice it should be amended (post, pp. 221, 227, 233, 240).

(5) That the misrecitals in the enforcement notice of December 20, 1960, did not invalidate the notice or render it a nullity. The notice was too wide and the appellant was entitled to have the notice limited to "residential" caravans only: the Minister had so amended it and it was a good notice.

East Riding County Council v. Park Estate (Bridlington) Ltd.[1957] A.C. 223; [1956] 3 W.L.R. 312; [1956] 2 All E.R. 669, H.L. , and *Francis v. Yiewsley and West Drayton Urban District Council[1958] 1 Q.B. 478; [1957] 3 W.L.R. 919; [1957] 3 All E.R. 529, C.A., considered and applied* .

(6) That on the true construction of the notice of March 24, 1961, concerning land "B," it correctly alleged that there was no permission for the use of which the notice complained. If there was, however, a misrecital it was immaterial. It was not necessary ***200** to amend the notice by inserting the words "apart from any permission under the General Development Order " (post, pp. 223, 231, 234, 242).

Cater v. Essex County Council[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213, D.C., overruled .

Decision of the Divisional Court [1962] 2 Q.B. 555; [1962] 3 W.L.R. 654; [1962] 3 All E.R. 99, D.C. , as to the first notice affirmed and as to the second notice reversed.

APPEAL from the Divisional Court. [4]

The appellant, Leonard Harry Miller-Mead, was the owner of two sites called "the front land" and "the back land," each of about 1&1/2 acres, at Kenilworth Road, near Leek Wootton in Warwickshire.

On the front land between 1926 and 1942 a single caravan was parked and used as a residence. In 1942 use for human habitation of any caravan on the site ceased. Thereafter the site was continuously used for the repair, storage and sale of caravans. On February 6, 1952, the predecessor in title of the appellant applied to the local planning authority, the Warwick Rural District Council, acting on behalf of the Warwickshire County Council, for permission to develop the land, and on April 9, 1952, permission was granted for the retention of a temporary bungalow subject to conditions which are not material to this report. That permission was limited to expire on December 31, 1954. On September 24, 1954, the predecessor in title of the appellant made another application to the local planning authority for permission to develop the land, and on December 20, 1954, permission was granted in the following terms: "The local planning authority hereby give you notice that (1) permission is granted for the following development, namely, retention of bungalow and parking of caravans, etc. Subject to the following conditions namely, the permission hereby granted is for a temporary period expiring on December 31, 1956, ..." From some time in 1955 an employee of the appellant used a caravan on the site as a residence. The number of caravans on the site used for residential purposes increased; in 1960 there were four, and in 1961 ten. On December 28, 1960, the local planning authority issued an enforcement notice reciting that the front land was being used for the purpose of parking caravans and continued: "and whereas the aforementioned change of use constitutes development within the meaning of the Town and Country ***201** Planning Act, 1947 , and the conditions set out in a notice of permission to develop land granted in respect of the said land and dated December 20, 1954, under the provisions of Part III of the said Act, have not been complied with inasmuch as the site is now being used for the parking of caravans ... now therefore the" - local planning authority - "in pursuance of their powers ... do hereby give you notice to remove the caravans from the site and discontinue the use of the site for the parking of caravans thereon."

The back land was scrub land in respect of which no planning permission had been applied for or obtained. On March 24, 1961, the local planning authority issued an enforcement notice alleging that the land was being used as a caravan site and reciting that the change of use constituted a development which "had been carried out without the grant of planning permission under Part III" of the Town and County Planning Act, 1947 .

The appellant appealed to the Minister of Town and Country Planning against both enforcement notices on the grounds that permission ought to have been granted for the development to which the enforcement notices related; that no permission was required; that what was assumed in the enforcement notices to be development did not constitute or involve development; and that the enforcement notices were not served within the relevant period of four years. On July 13, 1961, an inspector appointed by the Minister held a local inquiry, and reported to the Minister, who gave his decision on October 26, 1961. He refused permission to develop the land. In respect of the front land he found that, so far as the use of the land for the parking of caravans for repair, storage or display was concerned, there was an existing use and that there had been no change in use; that the "recommencement of the use ... for the stationing of a residential caravan ... in 1955 ... constituted a development for which planning permission ... was required." He directed that the enforcement notice should be varied so that the user complained of should read "... the purpose of parking residential caravans," and the operative part "remove from the site all caravans used for the purpose of human habitation and discontinue the use of the site for the parking of caravans used for the said purposes." In respect of the back land the Minister found that for about two years before the date of the inquiry the site had ***202** been used as a recreation ground for caravan residents and directed that the notice should be varied by inserting the words "part of" in front of "caravan site." Subject to those directions the Minister decided to uphold both enforcement notices. The appellant appealed against the Minister's decisions in respect of both notices to the Divisional Court. The respondents to the appeal were the Minister of Housing and Local Government and the Warwickshire County Council. The Divisional Court held that the enforcement notice with regard to the front land, as amended by the Minister, was a valid notice but held that the enforcement notice with regard to the back land was a nullity on the ground that the recital that the development had been carried out without permission was a misstatement and that notice accordingly should be quashed by the Minister.

The appellant appealed against the decision of the Divisional Court with regard to the front land on the following grounds: (1) that the Divisional Court erred in law in holding that the Minister had power to amend the enforcement notice in the manner he did; (2) that the Divisional Court erred in law in holding that the enforcement notice, when amended, was a valid enforcement notice; (3) that the Divisional Court erred in law in holding that the enforcement notice when served was good on the face of it; (4) that the Divisional Court erred in law in holding that the Caravan Sites and Control of Development Act, 1960 , constituted a new code of law relating to enforcement notices.

The Warwickshire County Council, as the planning authority, appealed against the decision of the Divisional Court quashing the enforcement notice in respect of the back land. The grounds of this appeal were: (1) that the Divisional Court was wrong in holding that the enforcement notice was a nullity; (2) that the Divisional Court was wrong in holding that there was a false recital in the enforcement notice; (3) that the appellant not having appealed to the Minister against the said enforcement notice pursuant to section 33 (1) (b) of the Caravan Sites and Control of Development Act, 1960 , and the Minister not having made any decision on the appeal to him in respect of the question whether permission had been granted under Part III of the Town and Country Planning Act, 1947 , for the development to which the enforcement notice related, the Divisional Court

should not have entertained any appeal made to the High Court in proceedings **203* brought under section 34 of the Caravan Sites and Control of Development Act, 1960 ; (4) that the decision of the Minister should be quashed on the ground that the said enforcement notice contained a recital which was alleged by the appellant to be false in that it recited that the change of use had been carried out without grant of planning permission under Part III of the Act of 1947 when permission had been granted, under Part III of the Act of 1947, for the development to which the enforcement notice related, which ground the Minister had not considered and upon which the Minister had made no decision; or, alternatively, the Divisional Court should not have entertained the appeal without first sending the case back to the Minister for his decision upon the ground of appeal under section 33 (1) (b) of the Act of 1960 and, if deemed right, amending it under subsection (5) and subsection (6) of section 33 ; (5) that there was not any sufficient evidence upon which the Divisional Court could properly hold that planning permission had been granted under Part III of the Town and Country Planning Act, 1947 , for the development to which the enforcement notice related; (6) that the Divisional Court was wrong in holding that the present case could not be distinguished from *Cater v. Essex County Council* [5] ; (7) that if *Cater v. Essex County Council* [6] could not be distinguished it was wrongly decided and ought not to be followed.

R. E. Megarry Q.C. and *Jeremiah Harman* for the appellant. This appeal relates to the front land. The appellant succeeded as to the back land. The right of appeal to the justices against an enforcement notice conferred by section 23 (4) of the Town and Country Planning Act, 1947 , has been repealed. The appeal is now to the Minister under section 33 of the Caravan Sites and Control of Development Act, 1960 . For an enforcement notice to be valid it must comply with certain requirements. If it does not do so, it is a nullity. There have been two types of use of the front land: use for the storage of caravans and use for caravans for human habitation. The first submission is that the Minister had no power to vary this enforcement notice because it was a nullity and as such could not be amended. Subsection (6) of section 33 is in the nature of a slip rule. The power it confers can only be used in favour of an appellant. The notice charged the appellant with breach of a condition. The gravamen of the case against him is development without permission. That **204* the notice was a nullity appears from the three decisions on nullity: *East Riding County Council v. Park Estate (Bridlington) Ltd.* [7] ; *Francis v. Yiewsley and West Drayton Urban District Council* [8] and *Cater v. Essex County Council.* [9] These cases establish that an enforcement notice that makes a false allegation is void.

This notice contains two falsities. First, what is recited as constituting development cannot possibly be development. The notice recites that the land was being "used for the parking of caravans" and that the "aforementioned change of use constitutes development." In fact, the land has been used since 1942 for storing caravans, and to allege that it is now used for parking caravans cannot be an allegation of development under the Act of 1947. The only allegation is of "parking," not of residing or living in caravans on the land, or using the land as a site for human habitation in caravans. Even if the Ministerial insertion of "residential" before "caravans" is valid, it does not alter the position, for it merely limits the type of caravan to be parked and so excludes other types of caravan, e.g., those adapted for the purposes of a travelling library or office, or for builder's or

architect's draftsmen: the allegation is still merely one of "parking." Caravans in use as residences are not "parked."

Secondly, the notice recites that "the conditions ... have not been complied with" inasmuch as "the site is now being used for the parking of caravans in contravention of the said conditions. ..." This is untrue, because all that is alleged (namely, the parking of caravans) is a use that has continued for a long while, and the mere continuance of a long-standing use cannot constitute a breach of condition imposed long after the use began. He who seeks and obtains a planning permission does not derogate from any existing use rights which he has: *Mounsdon v. Weymouth & Melcombe Regis Borough Council* [10] ; *East Barnet Urban District Council v. British Transport Commission.* [11] Furthermore, the condition did not require any steps ***205** to be taken but merely said that the permission was for a temporary period, so that there is no breach of the condition. The Minister has not amended this recital, and the word "caravans" in it remains unqualified by the word "residential."

The real complaint of the local authority is that development has been carried out without permission in that there was the commencement of a use of the land as a site for human habitation; yet the enforcement notice alleges not development without permission but breach of condition, and these are two quite different types of infringement of planning control. It is not a case of minor errors in a good notice but substantial errors in a notice drawn on a wholly wrong basis. The case is the converse of the *Yiewsley* case. [12] There the landowner was charged with development without permission, whereas here he is charged with breach of condition.

As regards the amendments, under section 33 (5) the Minister could not amend a nullity into a validity, for the subsection applies only if the "informality, defect or error is not a material one." The Minister purported to act under section 33 (6) , and the Divisional Court has held that the Act of 1960 has laid down a new code which authorises the amendment. This is wrong. First, there is no new code. Most of section 33 (1) repeats what was explicit or implicit in section 23 of the Act of 1947. *[Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd.* [13] referred to.] Parliament cannot have intended what little of section 33 (1) is new to be treated as a new code which empowers the Minister under section 33 (5) or (6) to convert nullities into validities, nor to draw the fine distinction which would allow the Minister to validate nullities if the cause of nullity does not appear on the face of the notice, but not if it does. Secondly, section 33 (6) only permits a variation in the notice. "in favour of the appellant," and it cannot be in his favour to amend a bad notice into one that is good. "In favour of the appellant" cannot be construed as meaning "to the detriment of the appellant." If Parliament had wished to escape from the *Cater* [14] rule of nullity, it would have amended the provisions on which the decision was based (namely, section 23 (1), (2) of the Act of 1947), or else would have inserted more explicit words to ***206** make it clear that the Minister could make nullities into valid notices; the words "in favour of the appellant" point in the opposite direction.

Thirdly, section 33 (6) gives no power to amend recitals of fact. The power of "varying the terms" of a notice links up with section 33 (1) (f) and (g) , dealing with the steps to be taken and the time within which they must be taken, and replaces words in the Act of 1947, s. 23 (4) (b) ("vary the notice accordingly"). Section 33 (6) of the Act of 1960 thus merely provides machinery for carrying out the decision which the Minister has power to make under subsection (1) : he can quash the notice or make its requirements less burdensome to the appellant. In their context the words "varying the terms" are apt for this last purpose but not for correcting erroneous recitals of fact. If an untrue statement of fact is made, an alteration to make the false true cannot fairly be said to be "varying the terms" of the notice in anyone's "favour"; truth has no favour. The drafting of section 33 (5) emphasises the limits of section 33 (6). Under section 33 (5) there is a limited power to correct any error "in the enforcement notice," i.e., anywhere in the notice; but section 33 (6) merely gives power to vary "the terms of" the enforcement notice.

An enforcement notice must be reasonably clear and explicit in its terms so that the landowner can know what he has to do to comply with it; for the Act provides penalties for non-compliance, and the notice is intended to be acted upon. In the absence of clear words Parliament ought not to be treated as now having enabled planning authorities to perplex landowners with notices drafted in wide and indefinite terms and rely upon the Minister later pruning and varying the notices so as to make them clear and precise. The question should be: Was this a valid notice when served? Only if it was could the Minister amend it under subsection (6). The broad principle of the *Yiewsley* case [15] should not be whittled away.

Jeremiah Harman following. An enforcement notice must satisfy the requirements of section 23 (2) of the Act of 1947 and specify the development which it is alleged has been carried out without permission or the conditions which have not been complied with. It is not contended that the notice must be completely ***207** accurate, but the landowner must know what is alleged against him. The local authority must state in the notice with reasonable particularity of what it complains. This enforcement notice does not comply with that requirement. "Parking" is used three times in the notice. The local authority is clearly objecting to all caravans being on the land and requires the site to be cleared of all caravans, both occupied and unoccupied. The notice is too wide. It is not possible to blue pencil out the bad and leave the good. The notice is not only too wide, it is also ambiguous. A man should not be put in peril on an ambiguous notice. This notice was either quashable or a nullity. In either case the Minister should not have amended it.

E. D. Sutcliffe Q.C. and *J. R. Cumming-Bruce* for the Minister of Housing and Local Government and the local planning authority. The Act of 1960 lays down a new code. It gets away from the difficulty arising from treating recitals as sacred which meant that local authorities had to serve salvoes of enforcement notices. It largely arose out of the decision in *Cater v. Essex County Council* [16] under which anyone who had used land for any purpose for 28 days was treated as having planning permission for such use.

First, with regard to this notice. It contains no actual misstatement. It is widely framed but in substance it is accurate. It should be construed in the light of the surrounding circumstances. The

appellant had applied for a site licence. He knew that if he was not granted such licence he would be served with an enforcement notice. The notice is not misleading. The appellant knew that it referred to residential caravans. Here parking must be read as including residential caravans.

The power conferred on the Minister by subsections (5) and (6) of section 33 is wider than a mere slip rule. Under the law as it now stands an enforcement notice can only be challenged on one of the grounds specified in subsection (1) of section 33. The appeal must now be to the Minister. The jurisdiction of the justices has gone. Before the Act of 1960 the smallest mistake in a notice made it a nullity. This was the result of the decision of the House of Lords in *East Riding County Council v. Park Estate (Bridlington) Ltd.* [17] and of *Francis v. Yiewsley and West Drayton Urban District Council.* [18] The power to correct ***208** and vary an enforcement notice conferred by subsections (5) and (6) gets over the technical construction of these notices. If the Minister is satisfied that an error is not a material one he can under subsection (5) correct it. This is a new power. [Reference was made to *Brookes v. Flintshire County Council.* [19]]

An enforcement notice is not bad or a nullity if it satisfies the three requirements of section 23 of the Act of 1947, namely, it must specify the development or breach of condition alleged; the steps which it requires to be taken; and the period within which they have to be taken. It is then a valid notice. The notice in respect of the front land complies with those requirements. It is conceded that the expression "parking of caravans" means parking for any purpose and was therefore too widely expressed. The Minister had power under section 33 (6) of the Act of 1960 to correct, as he did, that excess by amending the notice in favour of the appellant. The Minister is the only person who can correct the notice. If the planning authority's appeal fails, the court's only power is to remit it to the Minister with the opinion of the court.

In construing the notice the permission granted to the site-owner may be looked at, but the application for permission (which the site-owner now for the first time seeks to produce) ought not to be looked at.

On the planning authority's appeal against the decision on the back land, the site-owner will seek to say that the validity the enforcement notice can be challenged on the grounds in section 33 (1) (b) of the Act of 1960, namely, that permission was nob required because the back land is land used in conjunction with a caravan site within section 1 (4) of the Act of 1960; but that ground was not relied on before the Minister and it is now too late for the site-owner to do so. This point is not merely academic. If the mind of the planning authority had been drawn to it the question whether this was land within the scope of the General Development Order of 1950 would have been investigated and evidence could have been called to enable the Minister to determine whether the 28-day permission under the order was or was not material, particularly as the order ceased to apply to caravan sites on August 29, 1960. The Act of 1960 corrected the Position which arose after the decision in *Cater v. Essex County Council,* [20] that an enforcement notice was bad because the recital in it stated that what had been done had been done without planning permission. The court, purporting to follow *Francis v. Yiewsley and West Drayton Urban District Council,* [21] held that

because of the existence of the General Development Order of 1950 there was a 28-day permission. The Minister has power under section 33 (5) of the Act of 1960 to amend any "informality, defect or error" if in his view it is not "a material one." The Minister could have corrected this notice by simply inserting the words "apart from the General Development Order of 1950 ." As the matter was not before him on the appeal the notice cannot now be quashed. Further, the order of the Divisional Court quashing it was not within the power of the court: see R.S.C., Ord. 59A, r. 6 (4) .

Megarry Q.C. in reply on the appeal as to the front land. Section 38 of the Town and Country Planning Act, 1959 , does not hurt this site-owner, because his permission of 1956 was an express planning permission subject to "conditions" only and not a permission under the General Development Order .

In construing the notice as to the front land the application of 1954 for permission, now produced, should be looked at together with the actual permission granted. First, because under section 14 (1) of the Act of 1947 a planning authority can only give permission where application has been made and, secondly, because that is what the court did in *Crisp from the Fens Ltd. v. Rutland County Council.* [22] If a person applies for permission to do A and gets permission to do A and B, then, so far as the planning authority is concerned, B is a nullity because it was never asked for.

[UPJOHN L.J. But the court is not directly concerned with the application for permission; it is concerned with an enforcement notice which is the institution of penal proceedings and cannot be construed by looking back to the permission or the application for permission, just as an injunction cannot be construed by looking back at the writ or something in the pleadings.]

The difference between an injunction and an enforcement notice is that the former rests on the court's discretion but the latter is statutory. The application for permission speaks throughout ****210*** of residential use as a caravan site, and "human habitation," whereas the permission is firmly wedded to mere parking. This contrast emphasises that the word "parking" in the permission means only the parking of "dead" caravans and does not include residential use. The Minister's amendment makes the notice no better; both as initially drawn and as amended the notice is either seriously misleading or plainly ambiguous, it does not show the landowner of what he is being accused or how he is to avoid penal consequences. A man should not be put in peril on an ambiguity. On the meaning of "park" the Shorter Oxford English Dictionary does not support the view that an essential ingredient of parking is that it shall be on someone else's land.

The Act of 1960 did not introduce a new code but only different machinery. Nothing in that Act affects the requirements of a valid enforcement notice as stated in section 23 (1) of the Act of 1947. *[Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd.* [23] and *Guildford Rural District Council v. Fortescue* [24] were also referred to.] If a notice is a nullity from the start it does not come within section 33 (8) of the new Act at all; and a notice which was bad under the pre-1960 Act law because of its recitals is still bad now, because the grounds for quashing it under section 23 (4) of the Act of 1947 were the same as those now in section 33 (1) (b) (c) (d) and (e) of the Act of 1960.

On the relation of nullity to quashing, it is conceded by the planning authority that the doctrine of nullity has not gone in toto; and if a notice is a nullity nothing which the Minister can do can convert it into a validity. On the authority of *Francis v. Yiewsley and West Drayton Urban District Council* [25] the front land enforcement notice is a nullity because the recital charges the site-owner with something which is substantially false. The Minister cannot cure it under subsection (6) of section 33 because that subsection applies only to enforcement notices and not to nullities.

The ratio of the *Yiewsley* case [26] was not that the notice had been framed under the wrong limb (i.e., as a notice for development without permission instead of for breach of condition) although this had been argued. It was that the notice was invalid because it made a material misstatement - and the judgment ***211** of McNair J. at first instance, [27] which was affirmed, was also based on the falsity of what was alleged. The decision of the Court of Appeal is binding authority for the proposition that a material misstatement invalidates the notice, and the case cannot be treated instead merely as an authority for what it could have decided but did not, namely, that the notice was based on the wrong limb. Further, the doctrine of nullity and the statutory powers of quashing a notice overlap. A notice may be perfectly truthful and no nullity, and yet grounds for quashing it may exist: see section 33 (1) (b) (c) (d) (e; and see the *East Riding* case. [28]

As to the planning authority's appeal on the back land notice; it is conceded that an appeal under subparagraph (b) of section 33 (1) was not put before the Minister; but if the notice was a nullity for the reason given by Jenkins L.J. in deciding *Francis'* case, [29] and followed in *Cater v. Essex County Council,* [30] it does not matter that ground (b) was not before the Minister.

In *Cater's* case Lord Parker C.J. [31] said that permission granted by the order of 1950 was a true grant of planning permission for 28 days and not a mere exemption from permission. If there has been no development, then the temporary use is not a change of use when it becomes permanent. Class 4 does in fact cover what it says it covers, namely, use of land for any purpose on not more than 28 days total in any calendar year. The word "temporary" does not occur in the text of Class 4. Planning control is concerned with the physical use of land, and not with the state of mind of the person making that use. The suggestion that development occurs when a person changes his mind and intends to carry on permanently a use which previously he intended to carry on only temporarily is quite untenable, for the physical use continues unchanged. Such a suggestion would make development vel non depend on the occupier's state of mind, and unjustifiably introduce a concept of psycho-analytical planning law into an already sufficiently complex field. Whether or not there is development must be determined objectively and physically, not subjectively and metaphysically.

During the argument on the front land when an illustration ***212** was being given of a case falling within section 33 (1) (c) of the Act of 1960, Diplock L.J. said that an enforcement notice must allege that planning permission was "required in that behalf under this part of the Act," in accordance with section 23 (1), (2) of the Act of 1947. Applying that to the back land, the enforcement notice is plainly bad. Further, no application for permission derogates from existing

rights. *[Mounsdon v. Weymouth and Melcombe Regis Borough Council* [32] was referred to.] In *East Barnet Urban District Council v. British Transport Commission* [33] the court applied the decision in the *Mounsdon* case [34] that a man is not hurt by a permission he does not need.

Sutcliffe Q.C. in reply. The question for decision in *Cater's* case [35] involved considering the appellant's state of mind and cannot be treated in the abstract. The subjective test is the correct approach to the question whether the permission under the General Development Order is a permission which renders the enforcement notice invalid.

As to the difference between nullity and quashing; there is no effective way of saying that a notice is a nullity and invalid from the beginning without an application to the court and putting before it something bearing the outward form of an enforcement notice and showing grounds on which it is a nullity. The only ground on which the back land notice could be said to be a nullity is ground (b) of section 33 (1) because the notice says that planning permission had not been given. The Minister now has power to correct that. Penal proceedings could not be resisted after an enforcement notice had been served, on the ground that it was a nullity ab initio, except in relation to a notice which was wholly unintelligible.

It is conceded that the Act of 1960 does not introduce a new code. A new way of thinking about how these notices should be treated is introduced by the Act, and section 33 is a direct result of the previous decisions in *Bridlington,* [36] *Francis* [37] and *Cater* [38] so that once the matter comes before the Minister he has power to correct.

December 12. LORD DENNING M.R.

These appeals are concerned with two fields at Leek Wootton in Warwickshire. They ****213*** are in the Green Belt. Each of them is 1&1/2 acres in extent. One of them is next to the main road. I will call it the "front land." The other the "back land." They are both owned by the appellant and he desires to use them as a caravan site. In July, 1961, when a Ministry inspector visited the site, the "front land" had on it a bungalow used as a dwelling: 10 residential caravans of a luxury standard used as dwellings with small cultivated gardens, fences and television aerials; and 21 caravans for sale (17 new and four second-hand). The "back land" was scrub land, overgrown with brambles, nettles and other weeds. There were no caravans on it but it was used for recreational purposes by the caravan dwellers on the "front land."

Throughout this case a distinction must be drawn between "residential caravans" (that is, caravans used for the purposes of human habitation) and "storage caravans" (that is, caravans stored on land for sale or repair and so forth). Under a new Act (the Caravan Sites and Control of Development Act, 1960) no occupier is allowed to use his land as a caravan site for the purposes of human habitation unless he has a site licence for it. At the commencement of the Act (August 29, 1960) established users, who were already lawfully using their land for residential caravans, were entitled to site licences as of right. Thus an occupier, who had been granted planning permission for

residential caravans or who had acquired a right by four years' user, was entitled as of right to a site licence if he applied in time. Even if he could not establish his right, nevertheless if his application was not rejected within six months, he was deemed to have been granted permission.

On October 27, 1960, within the time permitted by the Act, the appellant applied for a site licence. He applied to the local authority for a licence to use three acres (that is, both the "front land" and the "back land") as a site for caravans. On the form he was asked to state the type of caravan site for which he required a licence, and he answered "permanent residential," and the maximum number of caravans which he said he wanted for human habitation was 60. He claimed that the site had "existing use rights" and based his claim on these facts: "Used as residential site for more than four years without valid enforcement proceedings being taken by the planning authority."

This application was rejected by the planning authority. They disputed his claim that he had existing use rights. And ***214** within the six months they issued two enforcement notices (one in respect of each field) to stop him. If those two notices are valid, the appellant will have no right to a site licence. But if they are invalid, he will have an indefeasible right to a site licence, because the six months have long since expired, and it is too late for the planning authority to serve fresh enforcement notices against him. The whole case turns, therefore, on whether the enforcement notices are valid.

With this introduction, I turn to consider the history of these two fields. The "front land" has been used at various times both for "residential caravans" and "storage caravans." From 1926 to 1942 there was one residential caravan on it, but there was then a gap of 13 years before any other caravan was lived in on the site. This old use cannot give rise to any "existing use right" for residential caravans. In 1942 a company called Coventry Steel Caravans were bombed out of their premises in Coventry and they moved to this site on the front land. They built a bungalow on the site and one of their men lived there with his family. From 1942 onwards to this day the site has been continuously used for the repair, storage and sale of caravans. There has clearly been an existing use for that purpose: and no planning permission is or was necessary to continue it. On February 6, 1952, Coventry Steel Caravans applied to the planning authority for permission for "retention of temporary bungalow." That was granted, but limited to a period of time expiring on December 31, 1954. Then on September 24, 1954, Coventry Steel Caravans put in an application for permission to continue what they had done in the past. It was described as "temporary and occasional parking of caravans, banks or clinics awaiting entry to works on delivery to owners. Also occupation of bungalow by resident caretaker." It is to be noticed that there was no application for permission for residential caravans. Nevertheless when permission came to be granted on December 20, 1954, the rural district council on behalf of the county council as the planning authority gave permission in these words: "(1) Permission is granted for the following development, namely, retention of bungalow and parking of caravans, etc., subject to the following conditions, namely, the permission hereby granted is for a temporary period expiring on December 31, 1956 ... (2) The reasons for the council's decision to grant permission for the development subject to conditions hereinbefore specified are: to ensure that the land shall not become permanently used as a site for temporary dwellings."

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Mr. Megarry said that that permission must be construed along with the application. The words "parking of caravans, etc.," he said, meant parking of caravans for storage, awaiting entry to works, and so forth: they did not extend so far as to include caravans for the purpose of human habitation. I do not agree. A grant of permission runs with the land and may come into the hands of people who have never seen the application at all. It cannot be cut down by reference to the application. But it is proper to look at the reasons, as this court held in *Crisp from the Fens Ltd. v. Rutland County Council.* [39] So construed, I regard this permission as a permission to park caravans for any purpose, not only for storage but also for residential purposes where people can live. But it was a temporary permission limited to expire on December 31, 1956.

The appellant bought the freehold in 1955 and he seems to have acted on this temporary permission. Some "residential caravans" began to appear on the site, whereas previously there had only been "storage caravans." In 1955 one residential caravan came on the site, in 1959 there were two residential caravans there, and in 1960 there were four. The appellant had no permission for these later "residential caravans." After his first permission expired on December 31, 1956, he applied each year for permission for the retention of the bungalow and the parking of caravans. Each year he was granted permission for the retention of the bungalow but refused permission for the parking of caravans. Nevertheless, despite the refusal he kept on using the site for residential caravans. If he had continued using it for "residential caravans" for four years from December 31, 1956, he would have acquired an "existing use right" for "residential caravans." But before the four years elapsed, things were brought to a head. On December 28, 1960, the planning authority served an enforcement notice in regard to the "front land." Much turns on it. It was in these terms: "Whereas certain land situated on the west side of the Warwick to Kenilworth Road" - and then it describes the property - "is being used for the purpose of parking caravans, and whereas the aforementioned change of use constitutes development within the meaning of the Town and Country Planning Act, 1947 , and the condition set out in a notice of permission to develop land *216 granted in respect of the said land and dated the 20th day of December, 1954, under the provisions of Part III of the said Act has not been complied with inasmuch as the site is now being used for the parking of caravans in contravention of the said condition that the permission thereby granted was for a temporary period expiring on the 31st December, 1956. Now therefore the Warwick Rural District Council (acting for and on behalf of the Warwickshire County Council) in pursuance of their powers as Local Planning Authority under sections 23 and 24 of the said Act do hereby give you notice to remove the caravans from the site and discontinue the use of the site for the parking of caravans thereon within six months after the date on which this notice becomes effective. This notice shall take effect on the expiration of thirty days after the service thereof."

What is the true interpretation of that notice? Does it apply only to those "storage" caravans which were parked there? Or does it extend also to the "residential" caravans? Mr. Megarry urged before us that the notice on its proper construction was confined to the parking of "storage" caravans. If he were right in that contention, the notice would be liable to be quashed, because no permission was ever needed for parking "storage" caravans. There was clearly an existing use right in regard

to it. But I think Mr. Megarry's construction of this notice is incorrect. It is to be read in its ordinary sense. It seems to me that the words "for the purpose of parking caravans," in each of the three places where they occur, are wide enough to include, and do include, both "residential" caravans and "storage" caravans. Even so, however, Mr. Megarry says the notice is bad for another reason. Its recitals are incorrect. They are far too wide. They ought not to have included the "storage" caravans, for which there was an existing use right. Furthermore, until varied, the requirement was excessive. It required both "residential" caravans and "storage" caravans to be removed: whereas it should have been confined to "residential" caravans.

I turn now for a moment to consider the "back land." There was clearly no existing use right in respect of the "back land." It was only used for recreational purposes: and it had only been so used for two years. On March 24, 1961, within the six months, the planning authority issued an enforcement notice in regard to it. It was in these terms: "Whereas certain land situated on the west side of the Warwick to Kenilworth Road," and ***217** then describing the "back land," "is being used as a caravan site and whereas the aforementioned change of use constitutes development within the meaning of the Town and Country Planning Act, 1947 , and (a) the said change of use has been carried out without the grant of planning permission under Part III of the said Act. Now therefore the Warwick Rural District Council (acting for and on behalf of the Warwickshire County Council) in pursuance of their powers as local planning authority under sections 23 and 24 of the said Act and under section 17 (4) of the Caravan Sites and Control of Development Act, 1960 , do hereby give you notice to discontinue the use of the site as a caravan site within six months after the date on which this notice becomes effective. This notice shall take effect on the expiration of thirty days after the service thereof." Mr. Megarry said that notice was bad because its recital was incorrect. The notice recited that the change of use was "without the grant of planning permission." Mr. Megarry agrees that there was no express grant of permission but he relies on the permission given by the General Development Order . Under that order it was quite permissible for the appellant to use the land for 28 days in any year for recreational purposes. This permission, says Mr. Megarry, makes the recital incorrect and the notice bad. He relies on *Cater v. Essex County Council.* [40]

The enforcement notices having been served, the appellant appealed against them: for, if they were good, they were an effective bar to his use of the fields as a caravan site. Accordingly, in accordance with the provisions of section 33 of the Act of 1960, he entered appeals against the enforcement notices. I pause to say that his notice of appeal, although it included nearly every other ground of appeal, did not include the ground mentioned in section 33 (1) (b) , "that permission has been granted for the development to which the enforcement notice relates." Putting it shortly, it did not include the *Cater's* case [41] point.

On July 13, 1961, an inspector of the Ministry held an inquiry. On July 31, 1961, he made a report to the Minister in which he recommended that the enforcement notices be confirmed. On October 26, 1961, the Minister gave his decision. He did not confirm the notices as they stood but he gave directions to vary them. He evidently took note of the legal points which had been raised on the appellant's behalf.

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The Minister made variations in the enforcement notice of December 20, 1961, in regard to the "front land." Acting under the new power given to him under section 33 (6) of the Act of 1960, he directed as follows: "(i) the word 'residential' shall be inserted before the word 'caravans' where this latter word first occurs in the notice." In other words, in the first recital instead of "parking of caravans," he put in the word "residential" to make it "parking of residential caravans." In the operative part he went on: "(ii) there shall be substituted, for that part of the notice which specifies the steps required to be taken in compliance with the notice, the words 'remove from the site all caravans used for the purposes of human habitation and discontinue the use of the site for the parking of caravans for the said purposes'." In other words, he limited the operation of this notice so that it was no longer so wide as to include both the storage and parking of residential caravans. He only prevented the appellant using the "front land" for residential caravans. He left the appellant free to keep storage caravans there.

The Minister also made variations in the enforcement notice of March 24, 1961, in regard to the "back land." Acting under the power given in section 33 (5) of the Act of 1960 he directed that the notice be corrected by the insertion of "the words 'part of' before the words 'a caravan site' where these latter words occur in the notice." It was obviously more accurate to say "part of a caravan site" instead of "a caravan site." No objection is taken to that variation.

So the Minister confirmed both notices with variations. The appellant thereupon appealed to the High Court under section 34 of the Act of 1960. Appeals in each case came before the Divisional Court on June 7, 1962, consisting of Lord Parker C.J., Streatfeild and Lawton JJ. The court dismissed the appeal in regard to the "front land." They held that the enforcement notice in regard to it was good. But they allowed the appeal in regard to the "back land." They directed that the enforcement notice in regard to it was bad and should be quashed. If this is right, it means that the appellant is deemed to have permission to use the "back land" for a caravan site and it is too late for the local authority to recall it. (See section 17 (3) of the Act of 1960.) Now both sides appeal to this court. The appellant appeals in regard to the "front land" and the planning authority in regard to the "back land." The appeals do raise questions *219 of much importance in planning law having regard to the new statute which has been passed on the matter.

I will, if I may, first state the law as it appears to me to be established under section 23 (1) and (2) of the Act of 1947 as amended in 1951 and 1959. Those subsections still remain in force and must be given their proper effect. I do not go so far as the Divisional Court in thinking there has been an entirely new code. The law as to enforcement notices still remains, I think, as follows:

First, it must "appear" to the planning authority that there has been a breach of the law in that: either (a) there has been development without permission, or (b) that there has been a failure to comply with a condition or limitation subject to which permission was given.

Secondly, the enforcement notice must specify which of those two breaches is "alleged" to have taken place - note the word "alleged" - and it must specify the steps to be taken to remedy it.

Thirdly, if it is shown that there was no such breach as alleged, the notice may be quashed. Thus, if it appears that: (i) no permission was required for the development to which the notice relates, as was the case in *East Riding County Council v. Park Estate (Bridlington) Ltd.,* [42] or (ii) that permission had in fact been given for the development, as was the case in *Francis v. Yiewsley and West Drayton Urban District Council,* [43] or (iii) that what was assumed in the notice to be development was not in law development, as in *Eastbourne Corporation v. Fortes Ice Cream Parlour (1955) Ltd.* [44] then the notice may be quashed.

Fourthly, if the terms of the notice require more to be done than is necessary to remedy the breach, the notice can be cut down by making a variation in it.

Those propositions still seem to me to be good law, and to be recognised by section 33 (1) (b) (c) (d) and (f) of the Act of 1960.

But Mr. Megarry and Mr. Harman from the cases sought to derive this further proposition, that an enforcement notice must ***220** set out in its recital with reasonable accuracy the particular breach of planning law which has taken place. It matters not, they said, that the facts are all known to the user and not to the planning authority. The planning authority must at its peril get to know all the relevant facts and state truly in the recital the offence which has been committed. If it does not do so, the notice, they said, is bad and incurably bad. It is a nullity and void without any necessity of an order of the court to make it so. They say that this was the law established by *Francis v. Yiewsley and West Drayton Urban District Council* [45] and applied in *Cater v. Essex County Council* [46] and not affected by the Act of 1960. As I listened to the argument and read the cases, I began to wonder whether we were not in danger of returning to the formalism of earlier days. The recitals in an enforcement notice were being treated as if they were a charge against the offender, and not only a charge, but a record of his conviction, which must be strictly accurate, else it is a nullity and void. The reasoning employed to invalidate these enforcement notices bears a striking parallel to the reasoning which used to be employed to invalidate a conviction by justices. In *East Riding County Council v. Park Estate (Bridlington) Ltd.* [47] Viscount Simonds said: "It was, in the first place, contended that the Act was highly technical and, as it encroached on private rights, the court must insist on strict and rigid adherence to formalities. This, as a general proposition, commands assent, and not the less because disregard of an enforcement notice is an offence involving sufficiently serious penal consequences." This reminds me very much of what Sir John Holt C.J. said in 1704 in *Rex v. Chandler* [48] "in these summary proceedings the right of an Englishman of being tried per pares suos was taken away; therefore the court was to construe them strictly, so far as to see that the fact was an offence within the Act, and that the justices proceeded accordingly." The result of all this strictness was that the legislature had to intervene in the case of conviction. So also in the case of these enforcement notices the legislation has had to intervene. and it has adopted a somewhat similar method. It has intervened, not so much by changing the substantive law, but

by altering the procedure. and in so *221 doing, it has taken away the power of the courts to interfere on technical grounds.

Take the ordinary case where an enforcement notice contains a serious misrecital which shows that the planning authority is proceeding on a wholly erroneous basis. For instance, when it complains of a breach which was no breach, as when it complains of a development without permission, whereas permission has in fact been given, or for which permission was not required, or it assumes there was a development, whereas in law there was none. You used previously to be able to raise any of those matters before the courts. But by reason of section 33 (8) of the Act of 1960 you can no longer do so. You cannot raise it by an action for a declaration. You cannot raise it by appeal to the justices. Nor by waiting until there is an attempt to enforce it by criminal proceedings. You can only raise it by an appeal to the Minister. and even if you succeed in your appeal, the Minister can at most quash it. He cannot declare it to be a nullity or hold it to be void from the beginning. In this way the legislature has disposed of the suggestion that an enforcement notice is a "nullity" on any such ground.

Likewise when the requirements contained in the notice are excessive, you can no longer raise the matter by appeal to the justices. You can only raise it by appeal to the Minister. He alone - and not the justices - can vary the notice so as to limit the requirements to what is necessary. He can do this under section 33 (6): for it is "in favour of the appellant" to do so.

Finally, an enforcement notice is no longer to be defeated on technical grounds. The Minister has power under section 33 (5) to correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not a material one. This seems to me to be wider than the "slip rule." I think that it gives the Minister a power to amend, which is similar to the power of the court to amend an indictment. He can correct errors so long as, having regard to the merits of the case, the correction can be made without injustice. No informality, defect or error is a material one unless it is such as to produce injustice. Applied to misrecitals, it means this: if the misrecital goes to the substance of the matter, then the notice may be quashed. But if the misrecital does not go to the substance of the matter and can be amended without injustice, it should be amended rather than that the notice should be quashed or declared a nullity. In this way the legislature has *222 disposed of the proposition that there must be "a strict and rigid adherence to formalities."

It remains to apply these new considerations to the facts of this case. So far as the "front land" is concerned, there was a misrecital in the enforcement notice. It made an allegation against the appellant which was altogether too wide. It asserted that he had parked caravans without permission. That was wide enough to include both "residential" and "storage" caravans: whereas he had an existing use right for "storage" caravans. In my judgment that misrecital does not invalidate this notice or render it a nullity. No injustice has been done by it. It was an allegation which it was open to the appellant to disprove, and he did so on his appeal to the Minister. He showed it was too wide. The Minister amended the first recital by putting in the word "residential," but he did not amend the second recital. This may have been an oversight, but I do not think it matters.

No one is likely to be misled by it. Then coming to the operative part of the notice, there was an excessive requirement in it. It required the caravans parked there to be removed: and that included apparently both "residential" and "storage" caravans. The appellant was clearly entitled to have the requirement cut down so as to be limited to "residential" caravans only. and that the Minister duly did on the appeal. As amended I think the enforcement notice is clearly good: and I think the Divisional Court were quite right to uphold it.

So far as the "back land" is concerned, the Divisional Court thought that there was a misrecital in the notice because there was permission for this development under the General Development Order : and that therefore the notice was wrong in saying that it was carried out without permission. They felt bound by *Cater's* case [49] so to hold.

Now there was a preliminary objection to this point being taken at all. It was not included in the notice of appeal to the Minister. The relevant subsection (1) (b) of section 33 was omitted from the grounds of appeal. Not being raised before the Minister, I do not think it can be raised in any of the higher courts to which the case comes. Lord Parker C.J., unfortunately, omitted to deal with this point. Mr. Megarry told us that he argued that, by reason of this misrecital, the enforcement notice was a nullity and invalid from the beginning. Therefore, there was no need to appeal against it. If that was the argument which ***223** commended itself to the Divisional Court, I must say that I do not agree with it. Even if the recital was inaccurate, this notice was not a nullity. It was only ground for an appeal under section 33 (1) (b), and no such appeal was taken.

But apart from this preliminary objection, I must say that in my opinion the point is a bad one. I think that *Cater's* case [50] was wrongly decided. On the true construction of the enforcement notice in that case, I should have thought it complained only of the permanent use as a caravan site, as distinct from the temporary use permitted by the General Development Order . It was quite correct to allege, therefore, that there was no permission for the use complained of. Even if there was a misrecital, however, I think it was an immaterial one and does not affect the validity of the notice. Nowadays an amendment could easily be made, if desired, by inserting the words "apart from any permission available under the General Development Order "; but I do not think it necessary. The notice was plain enough and nobody was deceived by it.

I would, therefore, allow the appeal in regard to the "back land" and confirm the notice in regard to it, as well as the notice for the "front land."

UPJOHN L.J.

I agree with the judgment that has just been delivered and that the appeal of the appellant in regard to the front land must be dismissed and that the cross-appeal with regard to the back land must be allowed.

It is unnecessary for me to recite any of the facts which have been dealt with fully in the judgment of the Master of the Rolls. I can, therefore, go straight to the first question which logically arises, and that is to consider the true construction of the planning permission granted on December 20, 1954. The relevant words are these: "Permission is granted for the following development, namely, the parking of caravans, etc.," and the reason given was "to ensure that the land shall not become permanently used as a site for temporary dwellings." It is said that we must construe this permission in the light of the application for permission which was made on October 1 and that application was plainly confined to the parking of caravans which were not being used for human habitation. But I cannot accept that argument. It must always be remembered that the grant of permission runs with the land under section 18 (4) of the Town and Country Planning Act, 1947 , and a successor in title is **224* entitled to rely on the actual words of the grant: he will not have seen the application. But in any event the principle sought to be established seems to me unsound. The application may ask for too much or, as Mr. Megarry submits in this case, too little, but it is entirely a matter for the planning authority to consider what permission is to be granted and I do not see how logically one can construe the permission by reference to the application made. I, therefore, reject that argument. In saying that I am dealing only with questions of construction. I express no view on Mr. Megarry's argument that a permission granted in wider terms than the application might be ultra vires. That is not an issue before us.

The use of the word "parking" is of comparatively recent origin and in relation to caravans it has no fixed precise termino-logical meaning. I would regard a permission for "parking of caravans, etc.," especially having regard to the reasons as expressed in the permission, as giving permission to the appellant to park caravans which are going to be used for human habitation, and for brevity in the rest of this judgment I shall refer to such caravans as "live caravans" and also those caravans which are stored or offered for sale or which are there for repair on the premises I shall refer to as "dead caravans." So it seems to me quite plainly that the permission granted was a permission which extended to the parking of both live and dead caravans.

I turn then to the enforcement notice of December 20, 1960, and I deal with it, of course, before the amendments which were made by the Minister. It was at one stage submitted by counsel for the appellant that we must look at some application for a site licence in order to construe the enforcement notice. But I must protest in strong terms against looking at any document except the enforcement notice. This is a most important document, and the subject, who is being told he is doing something contrary to planning permission and that he must remedy it, is entitled to say that he must find out from within the four corners of the document exactly what he is required to do or abstain from doing. For this is the prelude to a possible penal procedure. It is comparable to the grant of an injunction and it is perfectly plain that someone against whom an injunction is granted is entitled to look only to the precise words of the injunction to interpret his duty. The order cannot be construed by reference to the earlier proceedings unless expressly incorporated in the order. The operative words here are that the appellant is "to remove the caravans from the site and discontinue the use of **225* the site for the parking of caravans thereon." Those words seem to me quite plainly to cover both live and dead caravans as a matter of construction.

Now, the facts are that with regard to the front land the planning permission given in 1954 was unnecessarily wide, for no permission was required to park dead caravans but only live ones. The enforcement notice for the same reason was too wide, for the planning authority had no right to require the appellant to remove dead caravans from the site or to discontinue the parking of dead caravans thereon, for they were already lawfully there. The whole question, therefore, that we have to consider is: what effect has that matter upon the validity of the notice? Does it invalidate the whole notice and render it inoperative of effect? At the moment I am using the word "inoperative" as neutral language to avoid at this stage questions of nullity or invalidity and the applicability of quashing procedure.

I propose to approach this matter in the first place apart altogether from authority. It is a question of construction of section 23 of the Act of 1947, and I deal with it first without reference to the Caravan Sites and Control of Development Act, 1960 . Now section 23 (1) starts by saying: "If it appears to the local planning authority," and so if it appears to them that the development was carried out after the appointed day without the grant of permission or that the conditions subject to which permission was granted have not been complied with, they may serve a notice. If it did not appear to the planning authority, then of course the condition precedent to the service of the notice would not be satisfied and it would be inoperative. But I draw attention to the fact that the verb is that it *appears* to them, not that the planning authority must be satisfied as to a certain state of affairs. Prima facie, therefore, one approaches this section with the idea in mind that a prima facie case only need be shown to satisfy the prerequisites of a valid notice. Then subsection (2) sets out the necessary contents of a notice. A notice has to specify certain matters. If it does not so specify, the notice is plainly inoperative as a notice under the Act. It must start by specifying one of two matters: the development alleged to have been carried out without the grant of planning permission or, as the case may be, the matters in respect of which it is alleged that any conditions subject to which permission was granted have not been complied with. Pausing there, the operative verb there in each case is "alleged." This is hardly the right word to use if the statements or recitals of fact have got to be substantially ***226** true and correct to ensure the validity of the notice. Then the notice may require such steps as may be specified in the notice to be taken within such period as may be specified for restoring the land to its earlier condition or for securing compliance with conditions. To be operative, therefore, the notice must specify these things, and if, for example, it does not specify what is to be done or within what period it is to be done, it will fail to have effect as an enforcement notice and the owner or occupier need not comply with it. Subsection (3) also lays down positively (and that I think is important) that the notice shall take effect at the expiration of a specified period and that period must be not less than 28 days after service. Plainly, therefore, if there is no such statement of a specified period or if it is expressed to take effect within 28 days of service, subsection (3) will not be satisfied and the notice will not operate. Then the section goes on to explain the remedies which are available to the person upon whom the notice is served and who feels aggrieved by their exercise. Section 24 deals with the penalties to which he may be liable for failure to comply with a valid notice.

Now, what happens if a notice does not comply exactly with those sections? As a matter of common sense, if it does not specify the steps to be taken to remedy the alleged breach of

planning permission or the alleged failure to comply with the conditions with proper and sufficient particularity, the notice will not be operative. So, too, if subsection (3) is not complied with. Now, I think, is the time to draw the distinction between invalidity and nullity. For example, supposing development without permission is alleged and it is found that no permission is required or that, contrary to the allegation in the notice, it is established that in fact the conditions in the planning permission have been complied with, then the notice may be quashed under section 23 (4) (a) . The notice is invalid: it is not a nullity because on the face of it it appears to be good and it is only on proof of facts aliunde that the notice is shown to be bad: the notice is invalid and, therefore, it may be quashed. But supposing the notice on the face of it fails to specify some period required by subsection (2) or (3). On the face of it the notice does not comply with the section; it is a nullity and is so much waste paper. No power was given to the justices to quash in such circumstances, for it was quite unnecessary. The notice on its face is bad. Supposing then upon its true construction the notice was hopelessly ambiguous and uncertain, so that the owner or occupier could not tell in what respect it was alleged that he had ***227** developed the land without permission or in what respect it was alleged that he failed to comply with a condition or, again, that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches. The notice would be bad on its face and a nullity, the justices had no jurisdiction to quash it, for it was unnecessary to give them that power, but this court could, upon application to it, declare that the notice was a nullity. That to my mind is the distinction between invalidity and nullity.

In the present case there is no question of uncertainty or ambiguity in expression. On the face if it the notice appears to comply with the requirements of section 23 in every particular. Upon investigation of the facts, however, it is proved that the allegations go too far and require the owner or occupier to do too much, because the notice orders him to remove dead as well as live caravans. At this stage, therefore, I would say that this notice was not a nullity. The question is whether it is invalid or whether it is capable of variation by the justices under section 23 (4) (b) . That is a matter upon which it is unnecessary to express a final opinion because that part of section 23 has been repealed, but I would think that if the order merely orders the subject to do too much, the justices would have jurisdiction to vary the notice to make it comply with the true state of facts and order the appellant to remove only live caravans. But is the notice invalid because it has alleged a breach greater than that which was in fact established? Apart from authority, to which I shall refer in a moment, I would think that the notice is not bad and invalid merely because it alleged too much. I have already stressed the importance of the words "appear" and "allege" and do not refer to them further. I do not think that the legislature intended the validity of the notice to depend upon an entirely accurate recital of the facts. A planning authority cannot necessarily know all the relevant facts; for example, application may have been made for permission which was not required. If the officers of the planning authority see that the permission granted is not being observed, it may reasonably appear to them that it is not being complied with and they may reasonably allege that in the notice. Of course, if it is established that that is quite wrong, the justices have the power, and indeed the duty, to quash it, but I think a consideration of these facts shows that the section did not contemplate that a mere misrecital of some fact or some inaccurate allegation would necessarily be fatal to the validity of the notice. It seems to me ***228** that each case must depend upon its own facts. The whole question is whether section 23 is complied with in the requirements it lays

down for the contents of a notice. Some mistake in the notice would not, I would think, amount to a failure to comply. Of course the failure to comply with the notice may be so fundamental that the notice is bad on its face and a nullity or, while not a nullity, is proved to be so inaccurate in its recital of the facts that it would not be right to call it an enforcement notice under the Act but ought to be quashed by the Minister under section 33 (6) of the Act of 1960. It seems to me that must depend on the facts of each case. That, at all events, is my approach to this section.

How, then, do the authorities stand? The first one is the case in the House of Lords of *East Riding County Council v. Park Estate (Bridlington) Ltd.* [51] The notice alleged a "contravention of planning control." It was established that the contravention complained of was not a post-appointed day contravention but a pre-appointed day control to which section 75 of the Act and not section 23 applied. Lord Simonds held, as a matter of construction, that the notice was a notice under section 23 and therefore (these words are now my own) the notice completely misfired. That, I think, is clear from what he said. [52] Lord Cohen and Lord Evershed agreed with that view, but Lord Simonds went on to express the view that, if he was wrong as to that, the notice was not sufficiently clear to comply with the Act. Lord Simonds said [53] "It was, I think, admitted that the words 'planning control,' which deliberately avoid the technical expression 'previous planning control,' were chosen in order to cover compendiously any possible breach of any possible planning Act. This is not, in my opinion, a legitimate way of framing a notice, the disregard of which involves penal consequences, nor is it what section 23 (2) requires." On that view it would seem to me that the notice would be a nullity. Lord Morton, as I read his judgment, also took the view that the vice in the notice was that it did not comply with section 23. After quoting section 23 (2), he said [54] : "My Lords, as I read these words, they require the planning authority not only to specify the development to which the notice relates, but also to state either (a) that this development appears to the authority to have been carried out after July 1, 1948, without the grant of permission required ***229** in that behalf under Part III of the Act, or (b) that it appears to the authority that the following conditions, subject to which such permission was granted, have not been complied with in respect of the following matters - setting out the conditions in question and the matters in respect whereof such conditions have not been complied with." These, I think, were the obligations to which he referred in the passage I am about to read [55] : "Counsel for the appellants submitted that section 23 (2) should not be construed as imposing on the planning authority the obligations which I have already set out. He suggested that the owner of the land would know when the development of the land was carried out and whether permission had been granted and, if so, on what conditions, whereas the planning authority might not know the first of these matters; thus a notice couched in general terms, such as the present notice, involved no real hardship to the recipient, whereas a requirement of greater particularity in the notice might impose real hardship on the authority. My Lords, I cannot accept this submission. I think that the words of section 23 (2), on their natural construction, do impose upon the authority the obligations in question, and I see no reason for giving them any other construction." So he was pointing quite plainly to the necessity for the planning authority to specify clearly whether there was a breach of post-Act planning permission or not. Lord Radcliffe certainly took the view that the notice was bad, because it was too vague and he treated it as a nullity. Their Lordships, therefore, made it plain that to be a valid notice it

must be clear and not ambiguous and must not, as I call it, completely misfire. It was a notice given under section 23, when it should have been given under section 75 either expressly or by reference and made it clear that pre-appointed day contravention was complained of. That case is on its facts very far from the one before us.

The next case, which is of course also binding upon us, is the important case of *Francis v. Yiewsley and West Drayton Urban District Council.* [56] This is Mr. Megarry's sheet anchor and, with his customary skill, he made great use of it. I am bound to confess, having listened to him with much interest and attention, I do feel some difficulties about the exact ratio decidendi of that case. If I found any principles of construction relating to the relevant sections of the Act laid down in that case, I should, of course, be bound by them and loyally follow them, whatever my ***230** own views earlier expressed; but it is clear that no question of construction was decided in that case. Mr. Megarry submits, and I will admit with much force, that this case decides that a misrecital in an enforcement notice per se invalidates the notice. He can and does point to the later cases of *Cater v. Essex County Council* [57] and this case in the Divisional Court in which Lord Parker C.J., who was a member of this court in *Francis'* case, [58] seems to have thought in both those cases that *Francis'* case [59] did so decide. I do not pause to consider whether, notwithstanding *Young v. Bristol Aeroplane Co.* [60] that case, if it did so decide, would bind us to hold that any misrecital per se invalidates the notice, for I have just pointed out that the court did not reach that view as a matter of construction of the section. In every case the court has to decide: does the notice comply with the Act? But in truth, whatever may be read into some of the observations of the Lords Justices in *Francis'* case, [61] I do not think that they decided that a misrecital was fatal to the validity of an enforcement notice. The facts of that case, which are set out fully in the report of the case before McNair J. [62] were that in February, 1949, the owner applied for planning permission. He was refused permission but the plaintiff appealed to the Minister, who retrospectively granted him permission for six months from the date of his decision. Retrospective permission of course validated his act ab initio (see section 18 of the Act of 1947). The enforcement notice alleged a development without a grant of planning permission from February, 1949. In those circumstances, of course, that was a completely wrong allegation and therefore, as indeed Mr. Frank argued in the Court of Appeal, it could not have appeared to the planning authority that there was any contravention. In my judgment what that case decided was that if the notice proceeds on a wholly false basis of fact, it does not comply with the requirements of section 23. Section 23 requires that the allegations should be specified and this notice wholly failed to specify the relevant allegation, and as such it was held that the notice was ineffective. That, I think, is the real basis of their decision. Jenkins L.J. put it in this way [63] : "It follows from what I have said that, in my view, the notice proceeded (as the judge said in effect) on a wholly false basis of fact; and inasmuch as it proceeded" - and he ***231** repeats again - "on a wholly false basis and, so to speak, charged the plaintiff with an offence other than the offence he had actually committed, in my view it cannot stand." That, I think, is the effect of that decision. Its binding effect on us is that for the notice to be valid, it must allege either failure to comply with planning permission or a breach of condition. If one is specified when it should be the other, that is fatal to the notice. But that is a

decision not directly affecting the present case. So the notice is invalid, though in my view not a nullity, if it alleges a breach of planning permission when it ought to have alleged a breach of condition or vice versa. It is a matter for quashing under section 33.

Then we come to the case of *Cater,* [64] which I have already mentioned, and as my Lord has pointed out, that case depended entirely upon the Town and Country Planning General Development Order, 1950 . By that Order anyone, putting it briefly, can use his land for any purpose for 28 days in the year. That being so, it was said in *Cater's* case [65] that what ought to have been alleged was a breach of condition, rather than a failure to comply with planning permission and therefore it depended on a false recital of fact. But I think, like my Lord, that that case was wrongly decided. I personally think (though it is not necessary finally to determine the matter) that somebody, who is intending to use permanently his land or develop his land without permission as a caravan site, cannot avail himself of the purely temporary permission granted to him under the Order of 1950. In my judgment, the test is not entirely objective; it is subjective to the extent that a man, intending to use a site permanently for a development without permission, cannot claim user for 28 days in every year to excuse and permit that user, for a permanent user for a purpose not permitted and a temporary casual user up to 28 days in any one year are quite different things. But the point is a theoretical one. I would have thought the decision was wrong on that ground. But however that may be, I think *Cater's* case [66] was wrongly decided on a broader ground. There may have been a technical misrecital, but in the circumstances the real allegation was true in substance, even if I am wrong over the technicalities of the development order. Cater was using the site as a caravan site contrary to planning permission, and the fact, if it be so, that he might lawfully have done so for 28 days in any one year, albeit as part of his intention ***232*** permanently so to use it, was in my judgment nihil ad rem and completely insignificant. I think, therefore, that *Cater's* case [67] should have been decided the other way.

The whole question, therefore, now is whether the notice complies with section 23. One must remember the words of Lord Simonds in the *Bridlington* case [68] that the court must insist on a strict and rigid adherence to formalities, for the rights of owners and occupiers are being subjected to interference. This interference, however, on the other hand, is for the common good and the powers are entrusted to responsible public bodies of great experience. The requirements of the section must be interpreted with reasonableness in all the circumstances of the case. With all respect to *Cater's* case, [69] the function of the court is not to introduce strict rules not justified by the words of the section. I repeat, therefore, that in my judgment the test must be: does the notice tell him fairly what he has done wrong and what he must do to remedy it?

Before answering that question, I come to the arguments based on the Act of 1960. It was submitted on behalf of the Minister that the Act of 1960 introduced a new code, and this view appealed to the Divisional Court, but I am unable to agree with them. The prime and all-important section 23 of the Act of 1947 remains the principal section. What has happened is that certain powers, previously conferred upon the justices, have been enlarged and the proceedings now go to the Minister. I shall not pause to make any detailed comparison between the provisions of section 23

(4) of the old Act and section 33 of the Act of 1960. The remedies available to the subject are increased, but a greater limitation is put on his powers of coming to the court (see subsection (8) of section 33 compared with the provisions of section 24 (1) of the old Act). The Minister has been given wider powers of amendment of the notice of enforcement under subsection (8), though they are comparable to the earlier but more limited powers of the justices under section 23 (4) (b). The additional powers given under subsection (5) seem quite innocuous and I shall pause not at all on that subsection to consider whether that rule is wider than Order 28, rule 11, of the Rules of the Supreme Court . But I reject the notion that section 33 constitutes anything in the nature of a code, which expression, if it means anything useful, must mean, of course, a complete **233* compendious and exhaustive code barring all other proceedings. That is plainly not so. Suppose a notice on its face does not comply with section 23 (3) or is too vague to enforce. The Minister has no power to deal with that under section 33 (1) that I can see, and the power to come to the court for a declaration that the notice is bad on its face and is a nullity clearly remains. Indeed, the court may have jurisdiction where the order, though not a nullity, offends section 23 but not in any respect pointed out in section 33 (1). Direct resort to the court in such a case is not prohibited by anything in section 33 (8). In my judgment the Act of 1960 does no more than provide new and more comprehensive machinery to enable the subject to attack the notice and to enable the Minister to correct any errors in the subject's favour, and finally to quash the order on more general grounds than were formerly available to the justices.

So what is the result? It seems to me clear that subsection (6) was directed to just such a case as this, and it was to enable the Minister to vary the operative part of the order to accord with the facts as established before his inspector, if the original order went too far. The notice may have alleged too much. Then let it be amended in accordance with those facts provided, of course, it is in favour of the appellant, as in this case. But, of course, the Minister cannot by amendment cure a bad notice which wholly misfires and which it is his duty to quash on proof of the relevant facts, because that quite plainly would not be a variation in favour of the appellant.

I turn then to this notice. I think the notice was good, although alleging too much, but it was not thereby vitiated. I think it could have been varied under section 23 (4) (b) and can now be amended under section 33 (6). That is what the Minister has done. The only power in the court to correct what the Minister has done is when he has gone wrong in law. That appears from section 34. Has he gone wrong in law in making this amendment? He took the view merely that this order was not one which ought to be quashed but which went too far. That must necessarily be very much a question of fact and degree in each case. The Minister thought it was proper to amend it and I do not think we can say that is wrong in law. I think the notice went too far and so was open to attack by the appellant. The Minister varied it in the appellant's favour in order to do justice to him. On one small point he did make an amendment to the recital by inserting the word "residential." **234* I cannot see that he had any power to do that under subsection (6), under which he purported to act. He could plainly have done so under subsection (5), because I regard the amendment as utterly immaterial. For these reasons I would, therefore, dismiss the appeal with regard to the front land.

With regard to the back land, success on the part of the appellant must depend entirely on the correctness of the ratio in *Cater's* case. [70] I have already dealt with that fully and it follows that I think the appeal ought to be allowed. When I read the notice, apart altogether from *Cater's* case, [71] I can find no inaccuracy in it anywhere at all. No doubt the Minister was quite right under subsection (5) of section 33 to insert the words "part of," but apart from that the notice seems to me to be wholly accurate. Of course, there is the additional point, with which my Lord has dealt fully and with which I agree, that the respondent never took the *Cater's* case [72] point by pleading section 31 (1) (b) .

Therefore, for these reasons, which I have expressed very briefly as to the back land, I would allow the appeal with regard to that.

DIPLOCK L.J.

I agree with the orders proposed by my Lords. These appeals raise a question of construction of the Town and Country Planning Act, 1947 , and the Caravan Sites and Control of Development Act, 1960 , and in view of the careful analysis which has already been made by Upjohn L.J. of the relevant provisions of section 23 of the former Act, I can restrict my observations upon it within a small compass.

What seems to me to be important is this. Section 23 (1) of the Act of 1947 lays down conditions precedent to the service of an enforcement notice by the local planning authority. Before they can serve such a notice, it must appear to them either that development of land has been carried out after the appointed day without the grant of permission required in that behalf under Part III of the Act, or that some conditions, subject to which such permission was granted in respect of any development, have not been complied with. Unless one or other of those conditions precedent is fulfilled, the local planning authority has no power to serve such a notice. Like Upjohn L.J. I draw attention to the words "if it appears." Subsection (2) and the first part of subsection (3) of the same section set out what must be contained in the notice if it is to be a valid enforcement notice under the ***235** Act. The matters which it must specify are the development which is alleged to have been carried out without the grant of permission (that applies to the case where it appears to the local authority that development has been carried out without the grant of permission) or the matters in respect of which it is alleged that any such conditions have not been complied with (that applies to the case where it appears to the local authority that conditions, subject to which permission has been granted, have not been complied with). The notice must also, if it is to be effective at all, specify the steps to be taken as therein set out and the period within which such steps must be taken. Subsection (3) requires the enforcement notice to set out the date at which it is to take effect.

Those, then, are the statutory requirements as to the circumstances in which an enforcement notice can be served and as to the contents of a valid enforcement notice. I merely add, for this is now obsolete, that section 75 applied that section to cases where there was a breach of pre-1947 Act

planning control. It is not, I think, necessary for me to say more on the other subsections of section 23, save to point out that under that Act before the amendment in 1960, there were certain powers of appeal to the magistrates and the magistrates were given certain powers in some circumstances to quash the notice and in other circumstances to vary the requirements of the notice. One other matter to be noticed is that there was no provision in the Act which withdrew the jurisdiction of the High Court to make declarations as to the validity or effect of enforcement notices; nor was there anything to prevent a person, served with a notice when criminal proceedings were brought against him under section 24 (3) with a view to a fine, from taking in those proceedings any point available to him as to the validity of the notice or its effect, notwithstanding the fact that he had not exercised his right of appeal under subsection (4) of section 23 . This was ultimately established in the *Francis* case, [73] to which I shall refer later.

Those being the relevant terms of the Act of 1947 in relation to enforcement notices, I turn now to the judgments of two cases which are binding on this court, *East Riding County Council v. Park Estate (Bridlington) Ltd.* [74] in the House of Lords and *Francis v. Yiewsley and West Drayton Urban District Council* [75] ****236*** in this court. I turn to them to see what they decided, not to construe individual phrases which occurred in those judgments as if they were part of an Act of Parliament, as seems to be the habit nowadays. and in doing so I bear in mind that, particularly in extempore judgments (the judgment in *Francis'* case [76] and the judgment in *Cater's* case [77] were extempore judgments) wide expressions must be read secundum subjectam materiam. One must look to see what the real decision was and not take an isolated phrase as if it were intended to expound the whole law on the subject.

The *East Riding* case [78] came to the Court of Appeal on a case stated by magistrates on an appeal to the magistrates under section 23 (4) of the Act. The Court of Appeal held upon the true construction of the notice it alleged development without permission after the appointed day. The development complained of was in fact development before the appointed day and, accordingly, no permission under the Act was required for the development. The Court of Appeal held that the magistrates should have quashed the notice because, on the admitted facts, they should have been satisfied that no permission was required in respect of the development. When the case came to the House of Lords their Lordships were divided as to the grounds upon which the decision of the Court of Appeal should be upheld. Viscount Simonds [79] upheld it on the same grounds as the Court of Appeal. Lord Cohen [80] and Lord Evershed [81] did the same. Lord Morton, however, upheld the decision of the Court of Appeal on another ground. He said that an enforcement notice must specify whether the matter complained of is development without permission or a breach of condition subject to which permission was given in the case of post-1948 development, but he said, taking a different view of its construction from the majority of their Lordships, that the notice did not so specify. Lord Radcliffe [82] did the same. They held, therefore, that the notice was a bad notice because it failed to specify the charge - whether it was development without permission, breach of condition subject to which permission was given or breach (as it was in that case) of pre-1947 planning control. However, Lord Cohen [83] and Lord Evershed, [84] although both these statements

*237 were obiter, concurred in the view that an enforcement notice, in order to be a valid notice under the Act, must specify whether the complaint is of development without permission or a breach of a condition subject to which permission is given.

I turn then to the *Francis* case [85] upon which Mr. Megarry has strongly relied. That was an action for a declaration that the enforcement notice was ineffective. The enforcement notice alleged development on February 1, 1949, the Minister having subsequently given permission in 1950 for retention of the development for another six months. It was held by the Court of Appeal, affirming McNair J., that the effect of the definition of "permission" in section 18 of the Act was to enable the Minister to grant retrospective permission. It thus followed that the development alleged in the notice, on or about February 1, 1949, was development with "permission," albeit retrospective, and that the real complaint was the breach of the condition subject to which that permission was given, namely, that it should endure only until some time in 1950. This, therefore, was precisely the sort of case which had been contemplated in the *East Riding* case [86] in the passages in the speeches of Lords Morton, Radcliffe, Cohen and Evershed, to which I have referred. The notice specified the wrong charge. Before the Court of Appeal in the *Francis* case [87] it was argued that this notice was defective because the condition precedent to the service of an enforcement notice in section 23 (1) was not satisfied, because it could not have appeared to the local authority that the development had taken place without permission when they knew perfectly well that permission had been granted, though limited permission, as a result of the appeal to the Minister. It is to be observed that in the judgments of Jenkins L.J., and of Parker L.J. in the *Francis* case [88] the ratio decidendi turns not upon subsection (2) of section 23 but upon subsection (1) , viz., a failure to comply with the condition precedent: because it cannot have appeared to the local planning authority that the development was without permission. That appears at the outset of the passage in which Jenkins L.J. gives the reasons for his conclusion. This is what he said [89] : "I return again to section 23 (1)" and he reads it. "In the circumstances that I have stated," he goes on, "could it appear to the defendants that the development in the present case had been carried out after the appointed day without the *238 grant of permission required in that behalf under the Act?" Then he goes on to deal with the argument of Mr. Widgery in that case that the permission was not retrospective, i.e., did not date back to the development complained of in February, 1949, and he comes to the conclusion that it was in a passage [90] where he refers to the notice proceeding on a wholly false basis of fact. He is in my view clearly referring to the fact that it proceeds on the basis of a charge that development had taken place without permission and it must have appeared to the local authority not that development had taken place without permission but that conditions, subject to which the permission had been given, had not been complied with. I quote Jenkins L.J. [91] that they "charged the plaintiff with an offence other than the offence he had actually committed." Parker L.J. [92] refers to section 23 (1). He refers to the alternative conditions precedent to the service of an enforcement notice and it is in my view clear, that where at the end of the passage he says [93] : "Accordingly, in my view, the factual basis that has been referred to in this notice is false," he is referring, as Jenkins L.J. was, to the fact that the local planning authority had brought against the plaintiff in that case the wrong charge: they charged him with the wrong offence.

These two cases, which are binding on this court, are in my view authority for the propositions (1) that an enforcement notice, to be valid, must specify whether complaint is made of development without permission required under the Act of 1947, or non-compliance with a condition or limitation subject to which permission under the Act of 1947 was given or, what is now obsolete, non-compliance with previous planning control, and if it fails so to specify, it is a nullity: (2) that an enforcement notice, which alleges development without permission when in fact permission had been given, but a condition or limitation to which the permission was subject has not been complied with, is a bad notice and can be quashed, formerly by the magistrates under section 23 (4) (a) and now by the Minister under the powers conferred on him by section 33 of the Act of 1960: (3) an enforcement notice which alleges non-compliance with a condition subject to which permission is granted when in fact the development was development without permission, is also a bad notice and can be quashed. Under the Act of 1947 it could be quashed by the High Court. I need not pause to consider what under the ***239** Act of 1960 is the appropriate form of the proceedings for such quashing.

The first proposition, namely, that an enforcement notice must specify the charge made, is based upon the construction of section 23 (2) of the Act of 1947. If it fails to do so it is bad on its face and a nullity. The second proposition is based upon the construction of section 23 (1) because of the requirement as a condition precedent to the service of a notice that "it must appear" to the local planning authority that one or other of the conditions is satisfied. But the notice is not bad on its face; it can be shown to be bad by extrinsic evidence.

These cases are in my view no authority for the proposition that if the local authority's allegations of fact in support of the charge which they are making in the enforcement notice are inaccurate, the notice is void. If they were authority for that proposition, they would be judicial legislation and not construction of an Act of Parliament, for so to determine would ignore the words "if it appears" in section 23 (1) and the word "alleged" in section 23 (2); and unless forced, as I think I am not, to the opposite conclusion by clear unambiguous words in the judgment in *Francis'* case, [94] I should not be eager to read them as indulging in judicial legislation instead of construing an Act of Parliament. If the allegations in the enforcement notice fail in part, the remedy under the Act of 1947 was to appeal under section 23 (4) (b), or to go to the High Court for a declaration, or to wait to be prosecuted and raise the defence there. The Act of 1947, however, did leave this lacuna that if no appeal under section 23 (4) was brought, it was not wholly clear what the remedy was.

The Act of 1960 in my view remedied this. I agree with the Master of the Rolls that it does not create a wholly new code but it does make certain important differences. Subsection (1) of section 33 sets out the grounds upon which an appeal can be taken to the Minister, and, broadly speaking, they cover the same grounds as those on which an appeal could be taken to the magistrates, plus the additional and the shortened remedy of applying for planning permission, which was formerly in section 23 (3) of the Act. There are two important differences. Whereas the magistrates under subsection (4) of section 23 had only power to quash a notice or to vary the requirements of a notice, the Minister has wider powers. Under subsection (5) he may correct any informality, defect

or error if he is satisfied that it is not a material one, *240 and under subsection (6) he has power either to quash the notice or to vary the terms of the notice in favour of the appellant. Subsection (8) , which is an important subsection, provides that "The validity of an enforcement notice ... shall not be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b), (c), (d) or (e) of this section except by way of appeal under this Part of this Act." It seems to me quite clear that grounds (b), (c), (d) and (e) show that mistaken allegations of fact in an enforcement notice do not make the notice, which on its face complies with the requirements of the Act, a nullity, and I can see no reason, and certainly nothing in the Act, which would have the result that allegations in the enforcement notice, wider than the facts warrant, must be treated as making the notice void. The remedy, if the allegations are wider than are justified by the facts, is to appeal to the Minister and the Minister can then cut down the requirements of the notice to fit the facts proved, provided that some facts are proved which support a charge of the kind specified. That seems to me to follow from the construction of the Act and to make its provisions accord with common sense.

I turn, very briefly, to the facts of the appeal in relation to the front land. The enforcement notice set out that the land was being used for the purpose of the parking of caravans. The expression "the parking of caravans" seems to me to be plainly wide enough to cover the parking of caravans both for storage and for residential purposes, and I am comforted to see that in the submission before the inspector on behalf of the appellant it was said that "the reference to the parking of caravans plainly includes caravans for any purpose residential or non-residential." If I were in any doubt as to whether the words "parking of caravans" were wide enough to cover that, it is I think legitimate to look at the permission which is referred to in the enforcement notice, and I agree with my Lords that the references in the reasons "to ensuring that the land shall not become permanently used as a site for temporary dwellings," make it perfectly plain that the notice was intended to cover the parking of caravans for both purposes. Secondly, the land was in fact being used in breach of the condition on which permission was granted, that is to say, it was being used after the period for which permission was granted had expired. But since the permission was required at the time that it was given for residential caravans only, and none was required for the storage of caravans, which was an existing use, the condition *241 could not affect the appellant's right to park caravans on the land for storage. The Minister accordingly quite properly reduced the requirements to the removal of residential caravans which were there in breach of condition and not so as to prohibit the storage of caravans to which the condition subject to which permission was granted did not, because it could not, apply. The Minister in my view was perfectly right in coming to the conclusion that he did, and I may add that so far as he amended the recital by inserting the word "residential," it does not seem to me to be in any way material or to affect the validity of the notice one way or the other. I think furthermore that there is nothing in the cases to which I have referred to prevent the court coming to the conclusion that the decision of the Minister was right.

I turn, then, to the back land, in which case the enforcement notice alleged development without permission. Whether that was a good notice or not in my view depends upon whether the existence of the General Development Order of 1950 means that there was permission to use the back land as a caravan site. If *Cater v. Essex County Council* [95] was correctly decided, then, subject to a point

as to whether this ground of appeal was open in the Divisional Court, it seems to me that the notice would have been a bad notice because it would have alleged development without permission, whereas on the decision in *Cater's* case [96] the proper charge should have been breach of a condition subject to which development was permitted. The appeal as regards the back land turns, therefore, upon whether the temporary user of this land as permitted under the General Development Order is the same thing as permanent user of the back land as a caravan site. When I say "the same thing," I mean: does the change from temporary user under the General Development Order to permanent user involve a material change in the use of the land, for that is the definition of "development" in section 12 of the Act which is relevant for the present purpose. The General Development Order was made under section 13 (1) (a) of the Act, which provides: "The Minister shall by order provide for the grant of permission for the development of land ... and such permission may be granted - (a) in the case of any development specified in any such order, or in the case of development of any class so specified, by that order itself." So the Minister has power to give permission for a class of development and this ***242*** is what he purported to do. In section 3 of the General Development Order it was provided: "Subject to the subsequent provisions of this order, development of any class specified in the first schedule to this order is permitted by this order and may be undertaken upon land to which this order applies, without the permission of the local planning authority or the Minister," provided that it shall be subject to any condition or limitation imposed in the first schedule. The class of development (and I emphasise the word "class") which is relied upon is Class IV described as "temporary buildings and uses" (and I emphasise the word "temporary"). The relevant class of development is No. 2 of that class: "The use of land ... for any purpose on not more than 28 days in total in any calendar year, and the erection or placing of movable structures on the land for the purposes of that use."

The question which has to be considered is whether to change the use of the land from a temporary use referred to in the schedule to a permanent use for the same purpose is a material change in use. I should have thought as a matter of common sense where land is used for agricultural or any other purpose for at least eleven-twelfths of each year and is used for some other and temporary purpose for not more than 28 days in the year and that use is changed to a permanent use for that other purpose for 12 months of the year instead, that is plainly a material change of use of the land. It is quite plain that the Minister thought it was, otherwise he could not have described temporary use of this kind as a "class of development." It is true that if this court thought that the Minister was wrong in that opinion, it would not be binding on this court, but for myself I am clear that he was right. The test, I may add, is not a subjective test. It is: what is the land being used for? Has there been a material change of use? I think that when a temporary use of land for a particular purpose for not more than 28 days in the year is turned into a permanent use for that purpose, and the former use to which the land was used for the remainder of the year is abandoned, there is a material change in the use of the land.

I think, therefore, that the *Cater* case [97] was wrongly decided and I would allow the appeal in respect of the back land. I may add also, though I do not place this as my ratio decidendi, that I do not dissent from the view expressed by the Master of the ***243*** Rolls on the preliminary point

that this was an argument which was not open to the appellant in this court because he failed to take it as a ground of appeal before the Minister.

Representation

Solicitors: James and Charles Dodd ; The Solicitor, Ministry of Housing and Local Government, and Sharpe, Pritchard & Co. for R. M. Willis, Warwick .

Appeal dismissed with costs. Cross-appeal allowed with costs in the Court of Appeal and in the Divisional Court. Enforcement orders confirmed. Leave to appeal to the House of Lords. (B. A. B.)

Footnotes

1 Town and Country Planning Act, 1947, s. 23 (1) : "If it appears to the local planning authority that any development of land has been carried out after the appointed day without the grant of permission required in that behalf under this Part of this Act, ... the local planning authority may within four years of such development being carried out, ... serve on the owner and occupier of the land a notice under this section."

2 Town and Country Planning General Development Order, 1950, art. 3 (1) : "... development of any class specified in the First Schedule to this Order is permitted by this Order and may be undertaken ... without the permission of the local planning authority or the Minister ..." Sch. I: "The following development is permitted under Article 3 of this Order ... Class IV, 2. The use of land ... for any purposes on not more than 28 days in total in any calendar year, and the erection or placing of movable structures on the land for the purposes of that use."

3 Caravan Sites and Control of Development Act, 1960, s. 1 : "(1) ... no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence ... (4) ... 'caravan site' means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed." S. 33 : "(1) A person on whom an enforcement notice is served under section 23 of the [Town and Country Planning] Act of 1947 ... may ... appeal to the Minister against the enforcement notice on any of the following grounds, that is to say - (a) that permission ought to be granted under Part III of the Act of 1947 for the development to which the enforcement notice relates, or (b) that permission has been granted under the said Part III for the development to which the enforcement notice relates, or (c) that no permission was required under the said Part III in respect of the development to which the enforcement notice relates, or, as the case may

be, that the conditions or limitations subject to which such permission was granted have been complied with, or (d) that what is assumed in the enforcement notice to be development did not constitute or involve development for the purposes of the said Part III , or (e) ... (f) ... (g) ... (4) An appeal under this section shall be made to the Minister ... (5) On an appeal under this section the Minister may correct any informality, defect or error in the enforcement notice if he is satisfied that the informality, defect or error is not a material one. (6) On the determination of an appeal under this section the Minister shall give directions for giving effect to his determination, including where appropriate directions for quashing the enforcement notice or for varying the terms of the enforcement notice in favour of the appellant ... (8) The validity of an enforcement notice which has been served under section 23 of the Act of 1947 ... shall not be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b), (c), (d) or (e) of subsection (1) of this section except by way of an appeal under this Part of this Act ... (9) In the said section 23, proviso (a) to subsection (3) ... and the provisions conferring an appeal to a magistrates' court against an enforcement notice, shall cease to have effect." S. 34 : "(1) Where the Minister gives any decision in proceedings on an appeal under this Part of this Act against an enforcement notice the appellant or the local planning authority ... may ... appeal to the High Court against the decision on a point of law ..."

4 *[1962] 2 Q.B. 555; [1962] 3 W.L.R. 654; [1962] 3 All E.R. 99* , D.C.
5 *[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213, D.C.*
6 *[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213* , D.C.
7 *[1957] A.C. 223; [1956] 3 W.L.R. 312; [1956] 2 All E.R. 669, H.L.(E.*).
8 *[1958] 1 Q.B. 478; [1957] 3 W.L.R. 919; [1957] 3 All E.R. 529, C.A.*
9 *[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213, D.C.*
10 *[1960] 1 Q.B. 645; [1960] 2 W.L.R. 484; [1960] 1 All E.R. 538, D.C.*
11 *[1962] 2 Q.B. 484; [1962] 2 W.L.R. 134; [1961] 3 All E.R. 878* , D.C.
12 *[1958] 1 Q.B. 478* .
13 *[1959] 2 Q.B. 92; [1959] 2 W.L.R. 630; [1959] 2 All E.R. 102, C.A.*
14 *[1960] 1 Q.B. 424* .
15 *[1958] 1 Q.B. 478* .
16 *[1960] 1 Q.B. 424* .
17 *[1957] A.C. 223* .
18 *[1958] 1 Q.B. 478* .
19 *(1956) 6 P. & C.R. 140; 54 L.G.R. 355* .
20 *[1960] 1 Q.B. 424* .
21 *[1958] 1 Q.B. 478* .
22 *(1950) 1 P. & C.R. 48; 48 L.G.R. 210* .
23 *[1959] 2 Q.B. 92* .
24 *[1959] 2 Q.B. 112; [1959] 2 W.L.R. 645; [1959] 2 All E.R. 111, C.A.*
25 *[1958] 1 Q.B. 478* , 483, 489, 491.
26 *[1958] 1 Q.B. 478* , 483, 489, 491.
27 *[1957] 2 Q.B. 136, 143, 145-147; [1957] 2 W.L.R. 627; [1957] 1 All E.R. 825* .

28 *[1957] A.C. 223* .
29 *[1958] 1 Q.B. 478* .
30 *[1960] 1 Q.B. 424* .
31 Ibid. 436.
32 *[1960] 1 Q.B. 645; [1960] 2 W.L.R. 484; [1960] 1 All E.R. 538, D.C.*
33 *[1962] 2 Q.B. 484* .
34 *[1960] 1 Q.B. 645* .
35 *[1960] 1 Q.B. 424* .
36 *[1957] A.C. 223* .
37 *[1958] 1 Q.B. 478* .
38 *[1960] 1 Q.B. 424* .
39 *(1950) 1 P. & C.R. 48; 48 L.G.R. 210* .
40 *[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213, D.C.*
41 *[1960] 1 Q.B. 424; [1959] 2 W.L.R. 739; [1959] 2 All E.R. 213, D.C.*
42 *[1957] A.C. 223; [1956] 3 W.L.R. 312; [1956] 2 All E.R. 669, H.L.*
43 *[1958] 1 Q.B. 478; [1957] 3 W.L.R. 919; [1957] 3 All E.R. 529* , C.A.
44 *[1958] 2 Q.B. 41; [1958] 2 W.L.R. 886; [1958] 2 All E.R. 276, D.C.* ; *[1959] 2 Q.B. 92; [1959] 2 W.L.R. 630; [1959] 2 All E.R. 102, C.A.*
45 *[1958] 1 Q.B. 478* .
46 *[1960] 1 Q.B. 424* .
47 *[1957] A.C. 223, 233; [1956] 3 W.L.R. 312; [1956] 2 All E.R. 669, H.L.*
48 *(1704) 1 Salk. 378* .
49 *[1960] 1 Q.B. 424* .
50 *[1960] 1 Q.B. 424* .
51 *[1957] A.C. 223* .
52 Ibid. 232, 234.
53 Ibid. 236.
54 Ibid. 237.
55 *[1957] A.C. 223* , 239.
56 *[1958] 1 Q.B. 478* .
57 *[1960] 1 Q.B. 424* .
58 *[1958] 1 Q.B. 478* .
59 *[1958] 1 Q.B. 478* .
60 *[1946] A.C. 163, H.L.* ; *[1944] K.B. 718; 60 T.L.R. 536, C.A.*
61 *[1958] 1 Q.B. 478* .
62 *[1957] 2 Q.B. 136; [1957] 2 W.L.R. 627; [1957] 1 All E.R. 825* .
63 *[1958] 1 Q.B. 478* , 491.
64 *[1960] 1 Q.B. 424* .
65 *[1960] 1 Q.B. 424* .
66 *[1960] 1 Q.B. 424* .
67 *[1960] 1 Q.B. 424* .
68 *[1957] A.C. 223* , 228.
69 *[1960] 1 Q.B. 424* .

70 *[1960] 1 Q.B. 424* .
71 *[1960] 1 Q.B. 424* .
72 *[1960] 1 Q.B. 424* .
73 *[1958] 1 Q.B. 478* .
74 *[1957] A.C. 223* .
75 *[1958] 1 Q.B. 478* .
76 *[1958] 1 Q.B. 478* .
77 *[1960] 1 Q.B. 424* .
78 *[1957] A.C. 223* .
79 Ibid. 234.
80 Ibid. 247.
81 Ibid. 252.
82 Ibid. 240.
83 Ibid. 245.
84 Ibid. 247, 248.
85 *[1958] 1 Q.B. 478* .
86 *[1957] A.C. 223* .
87 *[1958] 1 Q.B. 478* , 483.
88 *[1958] 1 Q.B. 478* , 483.
89 Ibid. 489.
90 *[1958] 1 Q.B. 478* , 491, 494.
91 *[1958] 1 Q.B. 478* , 491, 494.
92 Ibid. 493, 494.
93 Ibid. 493, 494.
94 *[1958] 1 Q.B. 478* .
95 *[1960] 1 Q.B. 424* .
96 *[1960] 1 Q.B. 424* .
97 *[1960] 1 Q.B. 424* .