

**Case Name:** *Taytime Ltd v Secretary of State for Levelling Up Housing And Communities & Ors* [2023] EWHC 1522 (Admin) (21 June 2023)

**Full case:** [Click Here](#)

**Commentary:** This was a successful application for permission for a statutory review under section 288 of the Town and Country Planning Act 1990 (“TCPA”) of an inspector’s decision to dismiss an appeal against the refusal of planning permission for lack of a valid appellant.

The land in question was owned by Taytime Ltd (“Taytime”) and was within the area of Maidstone Borough Council (“the Council”). An earlier application relating to the land was submitted in 2011 by Monks Lakes Ltd (“MLL”) and Mr and Mrs Harrison. Mr and Mrs Harrison were the principals behind both Taytime and MLL.

In March 2020, the Council refused an application by Mr and Mrs Harrison for planning permission for the land. Taytime was named as the project manager for the application and had appointed consultants.

An appeal was made with the appeal form dated 11 September 2020 listing MLL as the appellant and Pegasus Group as MLL’s agent.

On 15 July 2021, the members of MLL passed a resolution to voluntarily wind up the company. In September 2021, the liquidators of MLL wrote to the Planning Inspectorate (“PINS”) to appoint Taytime to take over the appeal, and entered into an agreement with Taytime by which Taytime indemnified the liquidators as to cost, expenses and damages arising from the appeal.

In November 2021, PINS responded that it had considered the status of MLL but that the inspector would continue to determine the appeal unless it was withdrawn or MLL was dissolved.

Following the appeal hearing, the inspector determined that the appeal was not correctly made and so not capable of being lawfully determined, reasoning:

- i) section 78 of the TCPA explicitly limits the right to appeal against planning decisions to the “applicant”;
- ii) MLL was the applicant and had not yet been dissolved;
- iii) Taytime was now pursuing the appeal as the appellant, not as MLL’s agent, evidenced by Taytime undertaking appellant roles such as appointing Pegasus Group as agent and signing the statement of common ground;
- iv) the appellant (Taytime) was therefore not the applicant (MLL)
- v) Therefore there was no valid appeal capable of being determined and it had to be dismissed without assessment of the planning merits

Taytime applied for statutory review seeking to quash the inspector's decision on the following grounds:

- i) the inspector was in error to find that Taytime was not acting as MLL's agent and made an error of law to conclude that the appeal was therefore not correctly made; and
- ii) the inspector acted in breach of a legitimate expectation that the appeal would be allowed to proceed, generated by the November 2021 letter stating that this would occur unless MLL were dissolved or the appeal withdrawn.

In support of ground i), the appellant advanced points including:

- i) it was MLL that had launched the appeal;
- ii) MLL paid Pegasus' fees until it entered liquidation;
- iii) Nothing in s78 of the TCPA prevents appeals being assigned;
- iv) PINS recognised that as a matter of law the appeal would continue unless withdrawn or unless MLL was dissolved;
- v) the liquidators' letter to PINS was clear that MLL was appointing Taytime as its agent for the appeal, "appoint" here being a term under insolvency law; and
- vi) if this wasn't an agency appointment, an indemnity would not have been required.

The judge accepted that these points demonstrated an arguable case in relation to ground i), which was all that was required at permission stage. Noting that the case involved difficult issues of agency and insolvency law he noted that it would be desirable if the judge hearing the matter had commercial or insolvency law experience.

The judge went on to find that ground ii) failed as there was no promise in the PINS' November 2021 letter that was clear, unambiguous and devoid of relevant qualification. PINS was only saying that the appeal would continue for the time being but that if there was no valid appellant, the inspector would be empowered to terminate the appeal. There could be no legitimate expectation for an appeal to carry on if it was lawfully ended because it was invalid.

Permission to review was therefore granted, on ground i) only.