

**Case Name:** *Muorah v Secretary of State for Housing Communities and Local Government & Anor* [2023] EWHC 285 (Admin) (17 February 2023)

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

**Commentary:** This was an unsuccessful challenge pursuant to section 289 of the Town and Country Planning Act 1990, in which the Appellant sought to quash an Inspector's decision to dismiss her appeal against an enforcement notice. The notice, issued in 2017, enforced against an alleged change of use of a single dwellinghouse to two dwellings and the erection of a canopy and door.

The case has a litigious history. The Appellant had previously appealed against the issue of the enforcement notice and launched a statutory challenge against the Inspector's decision to uphold most of the enforcement notice at appeal, which succeeded as an error of law had been made in the decision. The case was remitted to the Secretary of State for reconsideration. Thereafter the Appellant made an application for a Certificate of Lawfulness for the development, which was refused by the Local Planning Authority but allowed by an Inspector on appeal. The Council successfully challenged the Inspector's decision to grant the Certificate and it was duly quashed. The second Inspector's decision on the enforcement notice was to uphold it, which precipitated the instant case.

After lodging the challenge to the second Inspector's decision on the enforcement notice, the Appellant was declared bankrupt. The challenge was brought on two grounds – one of which the Secretary of State had been prepared to consent to judgment on. The Appellant was not prepared to accept this limited concession, though, and so she proceeded with the challenge. The Secretary of State then applied to strike out the claim, on the basis that the Appellant could no longer pursue the appeal under section 289 because when she became bankrupt her interest in the land vested in the trustee in bankruptcy.

The Court did not address the substance of either of the Appellant's grounds for the challenge, finding that the Appellant no longer had an interest in the land following her bankruptcy and that this precluded further consideration of the grounds, notwithstanding that she had not been bankrupt when the challenge was made and notwithstanding that the trustee in bankruptcy had disclaimed their interest in the property (on which there is separate litigation proceeding). The option to bring the challenge had passed with the property to the trustee in bankruptcy: it had not been assigned back to the Appellant, and the trustee in bankruptcy had not sought to participate in the case.

Section 174 of the Town and Country Planning Act 1990 provides for an appeal to be made to the Planning Inspectorate against the issue of an enforcement notice by a local planning authority, such appeal to be made by a person with an interest in the land or a

“relevant occupier” (as defined by subsection 6). Section 289 permits the appellant in the section 174 appeal, or the local planning authority, or any other person with an interest in the land to challenge the Inspector’s appeal decision through the courts. Although Ms Muorah was the appellant in the section 174 appeal and the wording of Section 289 might therefore be read as though she could bring the statutory challenge, the Secretary of State submitted that the use of the word 'other' before the words 'person having an interest in the land' indicates that the third category refers to those with an interest in the land other than the appellant, who (if not a relevant occupier) is required by section 174 to have an interest in the land. This construction restricts the right of appeal to those who would be criminally liable for failing to comply with an enforcement notice. It was argued that Parliament did not intend to confer the ability to appeal on persons who would not have criminal liability.

The Appellant contended that, given that the Secretary of State had been prepared to consent to judgment, striking out the claim would be unjust. The judge disagreed, finding that it was no longer open to the Appellant to pursue the claim and so the enforcement notice remains in place. The judge noted, however, that it remained open to the Council to withdraw the enforcement notice or to modify it in light of the Secretary of State’s concession that an error had been made in the appeal decision.

*Case summary prepared by Aline Hyde*