



Neutral Citation Number: [2021] EWHC 948 (Admin)

Case No: CO/1706/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/04/2021

Before :

LORD JUSTICE POPPLEWELL
and
MR JUSTICE CAVANAGH

Between :

Ms Zoe Allen
- and -
London Borough of Ealing

Appellant

Respondent

Andrew Locke (instructed by **Alexander Shaw Solicitors**) for the **Appellant**
Mathew McDermott (instructed by **Director of Law and Administration, London Borough of Ealing**) for the **Respondent**

Hearing date: 16 March 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30 a.m. on Tuesday, 20 April 2021.

Lord Justice Popplewell:

Introduction

1. This is the judgment of the court on an appeal by way of case stated from District Judge (MC) Iyundo in Ealing Magistrate’s Court (“the District Judge”). It is concerned with a private prosecution brought by the Appellant, Zoe Allen, against the Respondent, the London Borough of Ealing (“the Council”) in relation to an alleged statutory nuisance of mice infestation at the property she rents from the Council. Section 82(6) of the Environmental Protection Act 1990 (“the EPA”) provides that before such a private prosecution may be brought, a notice of intention to do so must be given. Section 160 of the EPA applies to the giving or serving of notices required by the EPA, including a notice under s. 82(6). The appeal concerns the interpretation and application of s. 160, which is in similar language to sections addressing service and giving of notices in a number of other statutes.
2. Ms Allen’s solicitors, Messrs Alexander Shaw Solicitors (“Alexander Shaw”), had sent a written notice by recorded delivery post to the Council more than the required 21 days before the prosecution commenced. It was addressed to “the London Borough of Ealing” but not to any identified person or department. It was not addressed to the “secretary or clerk” who are individuals identified in s. 160(3) and (4) of the EPA; nor was it addressed to the department within the Council which dealt with these matters, which was the Housing Litigation Team.
3. The District Judge dealt with the question of the validity of the notice as a preliminary point at a hearing on 3 January 2020. He accepted the Council’s argument that service of the notice had been ineffective, with the result that the court had no jurisdiction to issue the summons or to consider Ms Allen’s complaint.
4. The District Judge stated a case under section 111 of the Magistrates’ Court Act 1980, which raised the following two questions:
 - i) Was I correct to find that a Notice under section 82(6) of the [EPA] must, by section 160(3) of the Act, be served on or given to the Clerk or Secretary of a Body Corporate or any identifiable person or Department of the Body Corporate, (given the 21 day time limit to respond to such a Notice)?
 - ii) Was I correct to find that proper Service of a Notice was not proved (and the Complaint/Summons must be dismissed) in circumstances where, notwithstanding the provisions of section 160(3) of the Act, the prosecutor contends that s/he can prove actual/physical receipt of the Notice at the Body Corporate’s proper address?
5. Ms Allen requires leave to appeal out of time, because although her solicitors lodged an appeal electronically within time, it was ineffective, having been lodged with the Queen’s Bench Division rather than the Administrative Court. Once the error had been drawn to their attention, the appeal was filed in the Administrative Court a little over a month out of time. The extension of time was not opposed by the Council and we grant it, applying the principles in *Denton v TH White Limited* [2014] EWCA Civ 906; [2014] 1 WLR 3926.

The statutory framework

6. Part III of the EPA deals with statutory nuisances, which are defined in section 79. They include, at section 79(1)(a), “any premises in such a state as to be prejudicial to health or a nuisance”. They also include, amongst other matters, at sub-sections 79(1)(g) and (ga), noise emitted from premises, or from or caused by a vehicle, machinery or equipment in a street, which is prejudicial to health or a nuisance.
7. Sections 80, 80A and 81 concern actions by local authorities against those responsible for statutory nuisances. The local authority is required to give a notice (“an abatement notice”) requiring the abatement of the nuisance or restricting its occurrence or recurrence, and the execution of such works or the taking of such steps as may be necessary for those purposes. The notice may be appealed to the magistrates court, but subject to any such appeal, it is an offence not to comply with the notice without reasonable excuse.
8. Section 82 is concerned with persons or entities other than local authorities who are aggrieved by a statutory nuisance for which others are responsible (whether a local authority or anyone else). It enables the complainant to apply to a magistrates’ court for an order requiring the defendant to abate the nuisance, within a specified time, and requiring the defendant to prevent a recurrence of the nuisance. The magistrates’ court may also impose a fine not exceeding level 5 on the standard scale. In addition, if the magistrates’ court considers that the nuisance renders premises unfit for human habitation, it may prohibit the use of the premises for human habitation until they have been rendered fit for that purpose.
9. Section 82(6) provides:

“Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.”
10. Section 82(7) provides that such notice of intended proceedings must be given to the proposed defendant not less than 21 days before instituting proceedings, except in relation to noise cases, in which 3 days’ notice must be given.
11. Section 160 of the EPA 1990 deals with any notice required or authorised to be served or given by or under the EPA. It is not confined in its application to notices under s. 82; it applies equally to local authority abatement notices given under ss. 80-8, and to a wide range of other notices provided for by the EPA which regulates activities relating to pollution control, waste management, contaminated land, litter, genetically modified organisms, nature conservation and countryside matters, and control of dogs amongst other things. Moreover, by reason of subsection (6) it applies not only to notices but also the service of any documents required to be sent under the Act. Section 160 provides:

“160 Service of notices

(1) Any notice required or authorised by or under this Act to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may—

(a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;

(b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

(b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

(6) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.”

12. Section 7 of the Interpretation Act 1978 provides:

“7 References to service by post

Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

13. Before leaving the statutory framework, we make an observation in relation to a feature of the language of s. 82, which has the potential to be confusing. This was drawn to our attention by Mr Locke, counsel for Ms Allen. The EPA 1990, s. 82(1) states that a Magistrates’ Court may act under the section on a “complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.” Consistent with this language, the summons issued by the Magistrates’ Court referred to Ms Allen’s “complaint”, and the authorities often refer to proceedings brought under s. 82 as a “complaint” (see, for example, *Fairless*, below). As *McCracken: Statutory Nuisance*, 4th Ed. (2019), points out, at paragraphs 6.39-6.40, the phrase “making a complaint” is apt to describe civil proceedings in Magistrates’ courts. However, proceedings under s. 82 are criminal proceedings, not civil proceedings (see *Botross v London Borough of Fulham* [1995] 16 Cr App R (S) 622). Criminal proceedings are commenced, not by making a complaint, but by laying an information before the magistrates.
14. Notwithstanding the reference to making a “complaint” in s 82(1), proceedings under s. 82 should be commenced by laying an information before a justice of the peace. This is made clear by section 50 of the Magistrates’ Court Act 1980, which provides as follows:

“50. Construction of references to complaint in enactments dealing with offences

In any enactment conferring power on a magistrates’ court to deal with an offence, or to issue a summons or warrant against a person suspected of an offence, on the complaint of any person, for references to a complaint there shall be substituted references to an information.”

15. In the present case, Ms Allen, through her solicitors, commenced the proceedings by laying an information upon the Magistrates. The question therefore does not arise as to whether the summons would have been defective if Ms Allen had made a complaint instead. It is not necessary nor appropriate for us to express a view on this matter, especially as we have not heard argument upon it. In this judgment, for convenience, and for consistency with the authorities, we have referred to a person who issues proceedings under s. 82 as “the complainant”, and to the proceedings as a “complaint”.

The facts

16. Ms Allen holds a secure tenancy from the Council of a flat at 54, Romney Court, Northolt. She was concerned about an infestation of mice in her flat, which she said had been taking place since at least September 2016. Ms Allen instructed Alexander Shaw to act for her, pursuant to a conditional fee agreement. Alexander Shaw has specialist experience and expertise in bringing proceedings on behalf of local authority and Housing Association tenants in housing disrepair matters, including bringing private prosecutions under section 82 of the EPA.
17. Alexander Shaw sent a letter to the Council on Ms Allen's behalf dated 9 August 2019. The letter was four pages long. The introductory paragraph of the letter said that Alexander Shaw had been instructed to act for Ms Allen in a housing disrepair matter, and that the firm was using the Housing Disrepair Protocol. It alleged that the Council was clearly in breach of its repairing obligations under Ms Allen's tenancy agreement and under the Landlord and Tenant Act 1985. The letter invited the Council to provide Alexander Shaw with its proposals for settlement and compensation for the inconvenience, discomfort, and loss of enjoyment suffered by Ms Allen. On the fourth page of this letter, there was a section headed, "**S. 82 EPA 1990 NOTICE**", which stated as follows:

“We write to inform you that if repairs detailed in our letter of claim are not carried out within 21 days of the date of this letter, we put you on notice that we will issue proceedings in the Magistrates Court for a breach of s79(1)(a) Environmental Protection Act 1990. We believe the disrepair items specified constitutes a statutory nuisance that is prejudicial to our client's and her family's health. Please note that this constitutes a s82 Notice for the purpose of any action that may be taken in the Magistrates Court.”
18. We will refer to this letter as “the Notice”. It was addressed to “The London Borough of Ealing, Perceval House, 14-16 Uxbridge Road, Ealing, London, W5 2HL.” Perceval House is the Council's Town Hall and headquarters. It is the Council's principal address.
19. The recorded delivery letter from Alexander Shaw was delivered to the Council's offices at Perceval Road on 12 August 2019. The Royal Mail provided Alexander Shaw with a “Proof of Delivery” document, which said that the letter had been signed for by “Mark”, with a facsimile reproduction of the signature. Neither the District Judge nor this Court was provided with any evidence of Mark's identity or role. No evidence has been provided by the Council as to what happened to the letter after it was signed for at the Perceval Road Offices. The Council's evidence is that it was not forwarded to its Housing Litigation Team, which has responsibility within the Council for dealing with s. 82 notices under the EPA. The Council did not respond to the Notice or take any action within the 21-day period specified in section 82(7)(b).
20. On 26 September 2019, some time after the 21 day period had expired, Alexander Shaw wrote to Willesden Magistrates' Court on behalf of Ms Allen, laying an information before the Magistrates, and enclosing a request for a summons for breach of section 79(1)(a) of the EPA 1990, and also enclosing a copy of the Notice. A summons was issued by Uxbridge Magistrates' Court on 14 October 2019, addressed to the Council, with a return date of 4 November 2019, at 10.00 am, at Ealing Magistrates' Court. In

accordance with a draft provided to the Magistrates' Court by Alexander Shaw, the summons was addressed by the Court to "London Borough of Ealing, Perceval House, 14-16 Uxbridge Road, Ealing, W5 2HL." The summons was served upon the Council by Alexander Shaw under cover of a letter dated 18 October 2019. The letter enclosing the summons was sent by Recorded Delivery. Once again, the letter was addressed to "The London Borough of Ealing" at Perceval House.

21. A Royal Mail "Proof of Delivery" document stated that the letter enclosing the summons had been delivered on 21 October 2019, and that it had been signed for by "Mark". The "Proof of Delivery" contained a copy of Mark's signature, which appears to be the same as that on the proof of delivery of the Notice. Again, he did not provide his surname.
22. On this occasion, the letter was received Mr Mark Lowes, who is the Voids and Disrepairs Manager at the Council. In his witness statement for the proceedings before the Magistrates' Court, Mr Lowes said that he first became aware of this matter on Friday 18 October 2019, when the complaint and summons arrived on his desk. This is somewhat mystifying, as the recorded delivery letter signed for by "Mark" on behalf of the Council is dated three days later, Monday 21 October 2019. However, Mr Lowes's recollection appears to be accurate, as we have seen an email sent by Mr Lowes on Sunday 20 October 2019 to the Housing Litigation Team which states "Re Statutory Nuisance – 54 Romney Court...The attached arrived on my desk on Friday. I have checked our records but I am unable to locate – not sure if you are aware of it." Nothing turns on this anomaly, however, as these proceeding are concerned with the requirements for service of the Notice, not the requirements for service of the summons.
23. Mr Lowes confirmed that neither he nor his Department had seen the letter dated 9 August 2019 from Alexander Shaw before 18 October 2019. He also arranged for enquiries to be made of the Council's Post Room about the volume of correspondence received, and exhibited to his witness statement the following response from Mr Daniel Ossei-Nyinaku, the Council's Post, Print & Distribution Ops Manager:

"Our monthly inbound volumes are around 20,000 items so loosely translates to 1,000 items a day – bear in mind that there are peaks and troughs.

Mail addressed simply to "Ealing Council" would be delayed as the team have to do some investigative work and there is also a risk of incorrectly addressed mail initially being sent to the wrong team and that then having to come back before being redistributed."

24. On 31 October 2019, Mr Ronnie Hopkins, a solicitor in the Housing Litigation Team, emailed Mr Tasneem Raza, the solicitor at Alexander Shaw with charge of the case, saying "We have had the opportunity to peruse the papers in this matter and do not accept that your notice of statutory notice has been properly served." The reason given was failure by Alexander Shaw to comply with the Council's notification of an address for service of such notices in a letter of 10 August 2018. The 10 August 2018 letter, which was signed by Mr Hopkins, on behalf of the Director of Legal and Democratic Services, and addressed to Alexander Shaw, stated, in relevant part:

“We write to inform you that henceforth the address for service of abatement notices pursuant to section 82 of the Environmental Protection Act against the London Borough of Ealing shall be:-

Housing Litigation Team,

Legal Department,

5th Floor,

Perceval House,

14-16 Uxbridge Road,

London W5 2HL”

In addition it would be appreciated that as well as a hard copy that a soft copy of the notice is sent by e mail to LegalSupport@ealing.gov.uk for the urgent attention of the Housing Litigation Team.

For the avoidance of doubt any further notices under section 82 of the Environmental Protection Act not sent to the above address will not be deemed as being appropriately served.”

25. This letter had been sent by email by Mr Hopkins to Mr Zoheb Chaudhry, a partner in Alexander Shaw. In his covering email, Mr Hopkins had said, “Please ensure that all fee earners are aware of the address for service.” Mr Chaudhry had replied the same day, saying:

“Received with thanks. I have updated our systems, hopefully future notices will be sent to the address specified....”

26. In his witness statement for these proceedings, Mr Raza said that, at the time when he sent the Notice to the Council on 9 August 2019, almost a year later, he had been unaware of the Council’s letter of 10 August 2018. The first time he had seen it was on 31 October 2019. He said that in August 2018 the firm had been extremely busy with moving offices and he assumed that due to oversight this was the reason that the email was not brought to his attention.

The ruling of the District Judge

27. At the hearing on 3 January 2020, Ms Allen was represented by Mr Andrew Locke of Counsel, and the Council was represented by Mr Mathew McDermott of Counsel, both of whom also appeared before us. The District Judge was provided with the witness statements of Mr Raza and Mr Lowes, and with the documents to which we have referred above, but no witnesses gave oral evidence at the hearing (the witnesses were present at court and the District Judge invited the parties to call them but they declined the invitation).

28. The District Judge gave an ex-tempore judgment, finding that the Notice had not been validly served and that the requisite 21 days' notice had therefore not been given before the summons was issued and served upon the Council. He accordingly dismissed the complaint. Though there is no official transcript, a note of the judgment was prepared by the Council, which the District Judge has seen and approved.
29. The District Judge said that it was common ground between counsel that there was no direct authority from higher courts on the point, and so he looked at the terms of the Act and at some guidance in related authorities which he treated as not directly on point. Having done so, he concluded that the Notice was invalid because section 160(3) of the EPA imposes a requirement that, where, as here, the recipient is a body corporate, the notice must be addressed to the secretary or clerk, which had not occurred in the present case. He said that "otherwise I see little, if any, purpose of having subsection 3 in place."
30. The District Judge took the view, however, that section 160 would also have been complied with if the notice had been addressed to "any individual who is in a position to act upon the notice". The District Judge said that his conclusion that section 160 had not been complied with was not altered by the fact that the letter containing the Notice was actually received by someone called "Mark", as there is no suggestion that he was a person in authority at the Council. As we read his judgment, in the District Judge's view there were two ways in which a person might comply with the requirement to give notice before issuing a summons for a statutory nuisance, where the intended defendant is a body corporate, namely (i) by serving or giving the notice to the secretary or clerk of the body corporate, or by sending it by post to the secretary or clerk at the registered or principal office of the body corporate; or (ii) by serving or giving the notice to an individual employed by the body corporate who is in a position to act upon the notice on behalf of the body corporate, or by sending the notice by post to one of those persons at the registered or principal office of the body corporate; such a person would include a person in authority at the body corporate.
31. This reading of the note of the judgment is consistent with the contents of Question 1 in the case stated, which indicate that the District Judge had found that the requirement to give notice for the purposes of section 82(6) would have been complied with if the notice had been served on or given to (a) the clerk or secretary of the Council, or (b) to any other identifiable person or Department in the Council. We infer from the terms of the District Judge's judgment that the reference in Question 1 to "any other identifiable person or Department in the Council" is a reference to any such person who is able to act upon the notice and/or to a person in authority; but that it would not include a specified person within the Council who was not a person in authority and was not employed within a department of the Council which had responsibility for dealing with s. 82 notices; the example he gave was a librarian.
32. The District Judge therefore found in favour of the Council and dismissed Ms Allen's application. He indicated that he did not need to determine whether the effect of the EPA 1990, section 160(5), was that, once the letter of 10 August 2018 was sent to Alexander Shaw the requirements of section 160 could only be complied with by service in accordance with the method that was set out in the letter. The effect of the District Judge's ruling was that the service was ineffective, regardless of the answer to that question. However, he regarded it as relevant, when considering the justice of the

matter, that Alexander Shaw, an experienced firm with relevant expertise, had received a clear request to send s. 82 notices to the Housing Litigation Team.

The parties' submissions

33. On behalf of Ms Allen, Mr Locke submitted that section 160 is permissive, not mandatory. If a notice is received by a person on behalf of a body corporate in circumstances in which such receipt is attributed to the body corporate in accordance with the normal common law rules of attribution, then there will be good service for the purposes of section 82(6). In particular, the reference in section 160(3) to serving or giving any such notice to the secretary or clerk of the body corporate is permissive, not mandatory: the complainant may serve upon such a person, but is not required to do so. This is indicated by the use of the word "may" in section 160(3). He submitted that otherwise section 160 would lay a trap for the unwary.
34. Mr Locke submitted that Ms Allen had therefore done all that was required of her by section 82(6). She had, in fact, effected postal service in accordance with section 160(2). Her solicitors had posted the letter to the Council, using the Council's principal address. It had been received and signed for by an employee of the Council, "Mark", who was able to accept service on the Council's behalf. There was no additional mandatory requirement to address the letter to the Council's clerk or secretary, or to address it to a person in authority or to a person or department at the Council with responsibility for dealing with s. 82 notices.
35. On behalf of the Council, Mr McDermott emphasised the importance of ensuring that the recipient of a notice under section 82 is given a proper opportunity to act upon it. The legislative regime for dealing with statutory nuisances gives intended defendants only a short window of time within which to deal with the nuisance and so to avert potential criminal liability and costs. In Ms Allen's case, the period provided to abate the nuisance was 21 days, but in a noise case the period is as short as three days. It is therefore crucial to the statutory purpose, Mr McDermott submitted, that the right people within a body corporate, who have the power and expertise to deal with statutory nuisances, have the notice drawn to their attention before the time period starts to run. Many bodies corporate, such as the Council, are very large and have complicated corporate structures. It is simply not good enough, he submitted, for a complainant to address a s. 82 notice to the body corporate itself at its registered or principal office. The Council receives 20,000 letters a month. If a notice is not addressed to a person in authority or a person or department with responsibility for dealing with such notices, there is an obvious risk that it will fall through the cracks when it arrives at the post room. Staff in the post room may well not know to whom it should be forwarded (and it is worth noting that Alexander Shaw's letter of 9 August 2019 did not even mention that it was a section 82 notice until the fourth page). The notice may never be seen by a person who is in a position to take action on it, as happened in the present case, or there may be a delay which means that the period of notice is substantially shorter in practice than that which is provided for by the statutory regime. Mr McDermott emphasised that section 82 potentially gives rise to criminal liability, and so the requirements relating to service of notice should be applied strictly.
36. In his oral submissions before us, Mr McDermott did not go so far as to submit that, where the intended defendant is a body corporate, a notice will automatically be ineffective unless it is served upon or given to the secretary or clerk of the body

corporate in accordance with the express words of section 160(3). Rather, he submitted that a purposive interpretation of section 160, and the normal rules of attribution, require that notice must be served or given, or, if posted, addressed to, the secretary or clerk, or to a person in authority, such as the Chief Executive, or to a person or department that deals with the type of notices in question. In the present case, this had not been done. It was not sufficient, in order to comply with the notice requirements in section 82(6) of the EPA, that the letter was addressed to the body corporate itself.

37. Mr McDermott did not submit that the effect of the Council's letter of 10 August 2018 which had been sent to Alexander Shaw was that any notices which were not sent directly to the Housing Litigation Team would be ineffective for the purposes of section 82(6). He was right not to do so. Section 160(5) enables a recipient to specify a different and additional address, other than that provided for in s. 160(4), which will then be treated as a valid address for service. It does not permit the recipient to proscribe and preclude what would otherwise be a valid method of service. Moreover, section 160(5) is not concerned with the identity of the persons to be served within an organisation. It is concerned, on its face, only with the addresses for service. In the present case, the Council did not take objection to the postal address used by Alexander Shaw, which was the Council's principal address: the Council's objection related to identification of the proper addressee (or rather its absence). The Council's letter of 10 August 2018 is legally irrelevant to the issue under appeal, although one can have some sympathy with the Council's frustration that Alexander Shaw did not comply with its terms. Alexander Shaw's approach was not helpful. However, section 160 must have the same meaning and effect for all complainants, regardless of the extent of their expertise, or the extent to which they, or their legal advisers, had prior dealings with the intended defendant.

Discussion

38. The central question, on the facts of this case, is whether the method of service adopted was ineffective because the Notice had not been addressed to the secretary or clerk of the Council, or to any other person or department identified by name or title. It is convenient to start with the question whether section 160 is permissive or mandatory: does section 160 set out the only permitted methods of service for the purposes of the EPA 1990?

Is s. 160 permissive or mandatory?

39. As the parties' arguments were developed orally before us, and were tested by questions from the court, it became clear that the gulf between the parties' submissions was narrower than we had originally understood. Both Mr Locke and Mr McDermott accepted that section 160 sets out permitted methods of service, but does not provide an exhaustive list of the only methods of service which are effective for the purpose of service of notice or documents under the EPA.
40. In our judgement Mr McDermott was right to concede that s. 160 is permissive not mandatory. Although this was not in issue, we think it right to set out at a little length our reasons for such a conclusion because it may be relevant to other statutes adopting the same or similar wording. Our reasons are as follows.

41. First, that is indicated by the language of the section. Subsections (1), (2) and (3) each use the word “may”, rather than “shall”, when referring to methods of service. This is permissive language. It is true that, depending on surrounding language and context, the word “may” can sometimes mean “must”. Nevertheless, the starting point is that the use of the word “may” connotes something which is permitted but is not mandatory. This is reinforced in this case by the contrast with the mandatory language “shall” in subsection (4).
42. Furthermore, if the word “may” were to be given a mandatory meaning in section 160(2), it would follow that it would also have to be given a mandatory meaning in section 160(3), and vice versa; and conversely if s. 160(2) is permissive, so too must be s. 160(3), and vice versa. As Mr McDermott recognised in his submissions, if the word “may” were to be interpreted in a mandatory sense in section 160(3), this would cause real difficulties. It would mean that where an intended defendant was a body corporate, the requirements of notice could only be satisfied by serving or giving the notice to the secretary or clerk of the body corporate. In many bodies corporate, including most local authorities, there would not be anyone whose job title was that of “secretary” or “clerk”. Most local authorities nowadays have a Chief Executive, rather than a Town Clerk. Many other corporate bodies in the public sector would not have, and would never have had, a secretary or a clerk. It follows that to ascribe a mandatory meaning to “may” in section 160(3) would lead to potential absurdities. It would mean that a notice would be invalid even if the prosecutor had actually served the person within the body corporate with responsibility for dealing with statutory nuisances, if s/he had omitted to address the letter to the “secretary or clerk”. It would also mean that this would be so even if the intended defendant did not possess a “secretary or clerk.”
43. Moreover, the language of s. 160(4)(a) suggests that s. 160(3) is permissive. Section 160(2) identifies three methods of service on the “person”, two of which are leaving it at his “proper address” or sending it there. Section 160(3) identifies natural persons who can be treated as “the person” for service where the latter is a body corporate or partnership, in the former case being the secretary or clerk. Section 160(4)(a) defines the proper address as follows: “(a) in the case of a body corporate **or** their secretary or clerk, it shall be the address of the registered or principal office of that body.” (emphasis added). The inclusion of the reference to the “body corporate” as an alternative to the “secretary or clerk” in this subsection suggests that service on a secretary or clerk are not the exclusive means of service on a body corporate. Moreover, it suggests that the statute envisages that a letter may be addressed to the body corporate itself, rather than to its secretary or clerk, notwithstanding section 160(3), which is of direct import on the facts of this appeal.
44. Secondly, the purpose of the notice regime supports this interpretation. Its purpose is to bring the contents of the notice or document to the attention of a natural person who can reasonably be expected to see that it is acted upon. If s. 160 were mandatory, it would mean that valid notice would not be effected despite such a person having full knowledge of the contents of the notice/document. For example, if a company with a sole director and shareholder received the notice by post at the director’s home address, there is no sensible reason why the notice should be treated as invalid. So too if the Council’s Housing Litigation Team had been based in a satellite office, rather than the Council’s principal or registered office, it would frustrate rather than serve the statutory purpose of giving notice if it had to be served on the principal office and could not

validly be served in person on the team at the satellite office, or by leaving it at that office. Much modern correspondence is conducted by email. It would be unsatisfactory if an email sent to the relevant individual in the Housing Litigation Team and read by him/her could not validly constitute notice.

45. Thirdly, the context of s. 82(6) notices reinforces this conclusion. As we have observed, section 160 applies to a very wide range of circumstances in which the serving of notices or documents may be required, but they include statutory nuisances giving rise to s. 82(6) notices. These often fall to be served by lay people who are unfamiliar with the legal process. The system should be operable by people who may be neither very sophisticated nor very articulate and who may not have the benefit of legal advice. It is designed to provide a simple and swift remedy. This requires an interpretation of s. 160 which avoids an over-technical approach. This has been emphasised in a number of the authorities.
46. In *East Staffordshire Borough Council v Fairless* (1999) 31 HLR 677, the issue was not whether the s. 82(6) notice had been served on the right person, or at the right location, but rather whether it was defective, as the appellant local authority contended, because it did not contain sufficient information about the matters which might be prejudicial to health, or state what works were required to remedy them. The Divisional Court (Kennedy LJ and Sullivan J) dismissed the local authority's appeal. At page 685, Sullivan J said:

“The number of cases under section 82 points away from the court adopting an over-technical approach to section 82(6) notices. The present case is a good example. It is accepted that a statutory nuisance did in fact exist at the date of the information. It would be most unfortunate if, purely because of a technical defect in a notice under section 82(6), the magistrates' court was deprived of any jurisdiction to make an Order under section 82(2), or to award the complainant compensation under section 82(12) if the complaint was justified when it was made but the nuisance had been abated by the time of the hearing. It is relevant, in my view, that a complaint under section 82 may be made by any person who is aggrieved by the existence of a statutory nuisance. It is important that ordinary members of the public who may not have any legal expertise, such as tenants, are not deterred from pursuing complaints which are well founded on the merits by over-technical procedural requirements. The complainant may know very well what it is he is complaining about, but find it difficult to set out at that stage precisely what should be done to remedy it.”

47. In *Pearshouse v Birmingham City Council* (1999) 31 HLR 756, the issue was again whether the section 82(6) notice was sufficiently detailed. The Divisional Court (Lord Bingham CJ and Collins J) allowed the appellant's appeal against the magistrates' finding that the notice had been defective. At page 768, Lord Bingham CJ said:

“Section 82 is intended to provide a simple procedure for a private citizen to obtain redress when he or she suffers a

statutory nuisance of any one of the various kinds itemised in section 79(1), which may relate to the state of the premises or the emission of smoke or the emission of fumes or gases, or dust, steam, smell or other effluvia arising on premises, or the accumulation or deposit, or the keeping of an animal, or noise, or anything else declared by statute to be a statutory nuisance. It would frustrate the clear intention of Parliament if the procedure provided by section 82 were to become bogged down in unnecessary technicality or undue literalism. It is important that the system should be operable by people who may be neither very sophisticated nor very articulate, and who may not in some cases, unlike this appellant, have the benefit of specialised and high quality advice.”

48. In *Birmingham CC v Ireland; Kingston Upon Hull CC v Hall; Birmingham CC v Baker* (1999) 31 HLR 1078, this consideration was applied to three conjoined cases in which the s. 82(6) notice was sent to an address other than the local authority’s registered or principal address. In each of the appeals, the principal argument relied upon by the complainant was that the local authority had specified an alternative address for the service of notices under section 160(5), and in each case the complainant had addressed the notice to that alternative address. It was, however, also argued that section 160 was merely directory and not mandatory, so that proper notice could be given other than in accordance with the provisions of section 160. The Divisional Court (Rose LJ and Mitchell J) decided the case in the complainants’ favour on the section 160(5) point, and found it unnecessary to decide the wider issue as to whether section 160 was directory or mandatory (see pages 1088-1089). Mitchell J referred to *Fairless* and *Pearshouse* and went on at page 1087:

“The rationale of the section 82 procedure is there clearly stated. It is a simple procedure for a private citizen to obtain redress when he or she suffers a section 79(1) statutory nuisance. Thus the system should be operable by people who may be neither very sophisticated nor very articulate and who may not in some cases have the benefit of legal advice. The notice should be such as will reasonably alert the recipient to matters complained of so that the recipient may take timely and effective steps to put right such matters as he accepts need to be put right. Thus the hallmarks of the statutory remedy can be summarised in two words: "simple" and "speedy".”

At page 1093, he said:

“This aspect of the 1990 Act [section 82(6) notices] is intended to provide ordinary people, numbered amongst whom are those who are disadvantaged (whether by reason of their health or their financial circumstances or otherwise), with a speedy and effective remedy for circumstances which will often have an adverse effect (or a potentially adverse effect) upon their health and/or the health of their children. Parliament's intention, in the absence of compelling statutory language, should not in our view be frustrated by introducing

into this straightforward and swift statutory remedy any technical obstacle of which the ordinary citizen will almost certainly be unaware. Clearly, the criminal nature of the proceedings under section 82 must not be lost sight of and the legitimate interests of those proceeded against under these provisions have to be protected.”

49. In each of these cases the Court emphasised the importance of avoiding an over-technical approach to section 82(6) notices because s. 82 is intended to provide a simple and swift remedy available for the benefit of lay persons. We respectfully agree, and this supports a conclusion that the service provisions in section 160 should be regarded as permissive rather than as a straitjacket. Indeed such was part of the reasoning in *Hewlings v McLean Homes East Anglia* (2001) 3 HLR 50 in which the Divisional Court decided as a matter of ratio that s. 160 is permissive. We return to the *Hewlings* case in more detail below.
50. Fourthly, this permissive interpretation gives coherence and purpose to s. 160. It is for the benefit of the server, not the recipient. Section 160 assists the complainant, and others who wish to serve notice or other documents under the provisions of the EPA 1990, who may well be lay persons, by providing a method they can use in order to be sure that service is effective. This means that section 160 in general, and section 160(3), in particular, are not otiose even if they are treated as permissive rather than mandatory.
51. Mr McDermott emphasised that the service of a s. 82(6) notice is a precursor to criminal proceedings, and submitted that this means that the requirements of service should be interpreted strictly. However, section 160 does not just apply to service of notices under section 82(6), or to service of notices in advance of criminal proceedings. Simply by way of example, section 160 also applies to the service of an application upon the enforcing authority for authorisation to carry out a prescribed industrial process, which, in broad terms, is one that may cause pollution (section 6); service of an enforcement notice by an enforcement authority upon a person who is believed to be breaching the conditions of an authorisation to carry out a prescribed process (section 13); service of fixed penalty notices for leaving litter (section 88); and service of a notice by the Secretary of State seeking information from persons involved in the importation, acquisition, keeping, release, or marketing of genetically modified organisms (section 116). There is no clear policy reason why services of a notice of the latter type, for example, should be governed by strict rules.
52. Moreover, it is clear that section 160 may not protect an intended defendant in a statutory nuisance case by ensuring that the notice is actually received at least 21 days or 3 days before the summons is issued, as the case may be, because the deemed service provisions in section 7 of the Interpretation Act 1978 apply. This means that a recipient will be deemed to have received the notice in the ordinary course of post, unless the recipient can prove otherwise.
53. Fifthly, the authorities provide strong support for treating s. 160 as permissive, although they do not speak entirely with one voice. There are three cases of direct relevance.
54. The first is *Leeds v Islington LBC* (1999) 31 HLR 545 (DC). In this case, the local authority had successfully argued before the magistrates that the appellant had failed to

comply with section 82(6) because he had sent his notice to the authority's Senior Estate Manager at his local housing office, rather than to the clerk of the local authority at the authority's principal office. The only issue argued on the appeal by way of case stated was whether the service was valid service under section 160(5) because the local authority had notified the appellant, before the notice was served, that the local authority would accept service upon the Senior Estate Manager at the local housing office. The Divisional Court rejected this ground of appeal on the facts, on the basis that the notification relied upon by the appellant, namely a statement on his rent-card that notices should be served upon the local housing office, applied only to notices served under the Landlord and Tenant Act 1987, and not to notices served under section 82(6) of the EPA.

55. No point was taken in *Leeds* that the notice was defective by reason of the appellant's failure to comply with section 160(3) or that the subsection was mandatory. However, that point was considered by Schiemann LJ of his own motion and he expressed his view as follows in his judgment (with which Poole J agreed):

“No point was taken on section 160(3) by counsel either here or below. However, it seems to me, on re-reading the Case Stated after judgment was reserved, that the notice in question, addressed as it was to the Senior Estate Manager, was not given to the clerk of the authority. The use of the word "may" in this context is not one which indicates that the persons specified in section 160(3) is one of a number of persons who may be served when it is sought to apprise a corporate body of the existence of a notice. If that were so, the subsection would be redundant. Take a situation where the notice is sent to the principal office of the authority so that one has none of the problems associated with getting the right address. If the notice is merely addressed to "the Authority" that arguably would not suffice. The notice should have been addressed to the clerk who would be in a position to secure that action was taken with all appropriate speed. But if the notice is addressed to someone other than the clerk – say the librarian – that does not seem to me to be good enough. In the present case it was addressed to the Senior Estate Manager at Canonbury Neighbourhood, Canonbury West Office. That does not seem to me, to comply with section 160(3). If that be right, then the magistrate was bound to come to the conclusion to which she came and we do not need to examine whether the route that she took was correct. However, the point not having been argued in this way, if counsel wish to address us on it before we formally hand down judgment, we will hear them.”

56. We would make a number of observations about this passage. It is *obiter*, as Schiemann LJ was not dealing with an issue which had been raised on the case stated; it was treated as such in the *Ireland* and *Hewlings* cases, and Mr McDermott, on behalf of the Council, accepted that it was *obiter*. As Schiemann LJ made clear, the Court in *Leeds* had not heard argument on the issue at the time when Schiemann LJ prepared his judgment and there is no indication from the law report that they did so thereafter. Further, the issue

which arose in *Leeds* was different from the issue which arises in the present case. In that case, the notice had been addressed to a specific council officer, other than the secretary or clerk, at a different location from the council's principal office. The Court left open what its decision would have been if, as in this case, the notice had been addressed to "the Authority", at the local authority's principal offices, in saying that it "arguably would not suffice". We also note that neither of the parties' submissions in the present appeal seeks to adopt the reasoning of the Court in *Leeds* in the passage set out above, because to do so would run counter the parties' common position that section 160 is permissive, not mandatory.

57. In *Hewlings v McLean Homes East Anglia* (2001) 3 HLR 50, the s. 82(6) notice was sent to a commercial company, rather than to a local authority. Before the notice was sent, the complainant entered into correspondence with Ms Hill, a director and the General Manager of the company, at an address, Tartan House, which was not the registered office of the company. A few days after Ms Hill responded to this letter, the complainant's solicitors wrote to her again, enclosing a s. 82(6) notice. The letter was sent to Tartan House, rather than the registered office, and was received a day after it was sent. Ms Hill responded almost immediately, saying that as a reputable company it took the matter very seriously and would get back to the complainant once she had concluded her investigations. In due course, a summons was issued, and the company took the point that notice had not been properly served. The complainant contended that the notice had been validly served under section 160(5), and argued in the alternative that the provisions of section 160 are permissive and do not exclude alternative methods of service. The company contended that section 160 was mandatory and its requirements had not been complied with. The magistrates agreed with the company and held that the notice had not been properly served. The Divisional Court (Rose LJ and Rafferty J) allowed the complainant's appeal.
58. At paragraphs 18 and 19 of her judgment, Rafferty J, with whom Rose LJ agreed, said:
- "18. The notice requirements under section 82 of the Environmental Protection Act need to be construed in accordance with their purpose within the legislation. That, in my judgment, is to provide a summary procedure for lay people to gain relief from nuisances.
19. I reject the respondent's contention that this court should consider whether the legislation is navigable by solicitors. This is not company legislation, but a statute specifically directed to the protection of the environment and contemplating action taken by the aggrieved layman, just as in this case."
59. Having referred at paragraph 20 to the passage in *Ireland* quoted above in which Mitchell J had emphasised the intention of parliament that s. 82 provide a swift and straightforward remedy for the lay person, Rafferty J went on at paragraph 21 to say:
- "21. It is a fact that the respondent company's manager and director, Mrs Hill, had knowledge of the notice and, in my view, was authorised to deal with it. If it matters, directors have extensive powers, as is well established. But section 160 is in any event permissive not mandatory."

60. At paragraphs 29 Rafferty J identified the first of the questions stated for the court as being whether the requirements of service contained in s. 160 are mandatory and whether no other means of service of the notice can be sufficient. This she answered at paragraph 30 in the following terms:

“30. I would answer that first question, no. The provisions contained within section 160 of the Act seem to me to be clearly on their face permissive as is demonstrated by the explicit use of the word used “may” in contrast to the selected word “must” in other parts of the statute.

31 In my view other means of service are sufficient”

61. Rafferty J went on to identify two “crucial issues” on the facts. The first was whether Tartan House was the principal office, albeit not the registered office, of the company, to which the answer she gave was affirmative at paragraph 34. The consequence was that notice had been given in accordance with s. 160(2). The second “crucial issue” was whether notice had in fact been given to the company irrespective of the terms of s. 160. At paragraphs 39 to 40 Rafferty answered this in the affirmative on the grounds that Mrs Hill was in a position of authority within the company, had receive the notice and had acted upon it. This second ground for allowing the appeal, which was dependent on the finding that s. 160 was permissive not mandatory, formed part of the *ratio* of the decision.

62. The third case which we have found of assistance, although not referred to in counsel’s submissions, is the decision of the Court of Appeal in *Knight v Goulandris* [2018] EWCA Civ 237; [2018] 1 WLR 3345, in which a number of authorities on the significance of the use of the word “may” in statutory provisions dealing with service were considered. It was concerned with an appeal against the award of a third-party surveyor in a party wall dispute. Under section 10(17) of the Party Wall Act 1996 (“the 1996 Act”), such an award may be appealed to the county court within fourteen days of the day on which the award was served on the party concerned. The respondent to the appeal contended that the appellant had received the award by email more than fourteen days before he lodged his appeal and so that the appeal was out of time. The appellant contended that the methods of service permitted by section 15 of the 1996 Act did not include service of awards by email (at least where the recipient had not agreed in advance to receiving electronic communications), and so that the award had not been served on him until a hard copy of the award had been received by his surveyor in the post, which happened less than fourteen days before the date on which the notice of appeal was lodged.

63. Section 15 of the 1996 Act provides, in relevant part:

“(1) A notice or other document required or authorised to be served under this Act may be served on a person—

(a) by delivering it to him in person;

(b) by sending it by post to him at his usual or last known residence or place of business in the United Kingdom; or

(c) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it by post to the secretary or clerk of that body corporate at that office.

(1A) A notice or other document required or authorised to be served under this Act may also be served on a person by means of an electronic communication, but only if—

(a) the recipient has stated a willingness to receive the notice or document by means of an electronic communication,

(b) the statement has not been withdrawn, and

(c) the notice or document was transmitted to an electronic address specified by the recipient.”

64. The main issue in *Knight v Goulandris* was whether section 15 should be treated as an exhaustive statement of the means by which a notice or other document can be validly served for the purposes of the 1996 Act (see paragraphs 15 and 18). At paragraph 19 of the judgment, Patten LJ (with whom Hamblen and Henderson LLJ agreed) explained the purpose of section 15 as follows:

“At common law service requires receipt of the document. The methods of service prescribed by s.15 and similar statutory provisions are there to assist the serving party in that if he uses them then there has been good service of the document for the purposes of the relevant statute even if the intended recipient either refuses to accept or (in cases, for example, of service by post) never in fact receives the document. To that extent, the common law rule is either modified or excluded.”

65. Patten LJ then reviewed a number of authorities on the provisions governing service in section 23 of the Landlord and Tenant Act 1927, in which it had been held that the provisions were permissive, rather than mandatory (for example, *Stylo Shoes v Prices Tailors Ltd* [1960] 1 Ch 396). The same approach was taken by the Court of Appeal in *Hastie and Jenkerson v McMahan* [1990] 1 WLR 1575 to the service of a list of documents under the terms of a consent order. The ways in which service of such documents “may” be effected were set out in RSC Order 65, rule 5(1). These did not include the way in which service was effected in *Hastie and Jenkerson*, which was by fax. The Court of Appeal held that there was, nonetheless, valid service, because the use of the word “may” in the Order meant that the methods of service were permissive and were not to be regarded as exhaustive (see Woolf LJ at 1581). A similar approach was taken in two cases which were concerned with requirements for notice in contracts, rather than statutes: *Ener-G Holdings plc v Hormell* [2012] EWCA Civ 1059, and *Greenclose Limited v National Westminster Bank plc* [2014] EWHC 1156 (Ch).
66. In *Knight v Goulandris* itself, it was accepted by counsel for the appellant that the use of the word “may” in section 15(1) is some indication that the provisions which follow were intended to be permissive only. Patten LJ continued, at paragraph 33:

“But as with any statutory provision it is necessary to have regard to the totality of the relevant provisions and to construe them by reference to the regime which they were intended to facilitate. As part of that process, one needs to take into account any contra-indications in the language of the section itself.”

67. Patten LJ considered section 15 of the 1996 Act and decided that neither the statutory framework nor the language of the section required the word “may” to be given a different meaning from the meaning it was given in cases such as *Hastie and Jenkerson*. At paragraph 37, he said that the cases he had reviewed, although dealing with other statutory provisions or contract terms, provided at least highly persuasive authority at Court of Appeal level for construing section 15 in the same way.
68. In our judgement, the same reasoning applies to section 160 of the EPA 1990.
69. Drawing the strands of these authorities together, they support the conclusion that section 160 is permissive rather than mandatory. That was part of the ratio of the decision in *Hewlings*, which is to be preferred to the *obiter* passage in *Leeds*. *Knight v Goulandris* itself, and the cases there referred to, amount to highly persuasive authority at Court of Appeal level for construing section 160 as being permissive. This approach is also consistent with the general guidance given by the Divisional Court in *Fairless*, *Pearshouse* and *Ireland*, to the effect that an over-technical approach to section 82(6) notices should be avoided.

The two factual issues

70. Two questions remain in order to determine this appeal. The first is whether the posting of the Notice addressed to the “London Borough of Ealing” at the Council’s principal address constituted valid service in accordance with section 160(2). The second is whether, if not, there was valid service outside the permissive requirements of s. 160.

Service in accordance with s. 160(2)?

71. Section 160(2) provides that any notice which is required or authorised to be served on, or given to, a “person” other than an inspector may be served by sending it by post to the person at his proper address. The “person” is the person upon whom the notice is required to be served. This is the intended defendant, the person against whom court proceedings are threatened (see section 82(2)). In the present case, this was the Council itself, not a particular officer of the Council, or the Housing Litigation Team. The requirements of section 160(2) itself were therefore satisfied by addressing the letter containing the Notice to the “London Borough of Ealing”.
72. Section 160(4) provides that, for the purposes of section 160, and for the purposes of the Interpretation Act 1978, section 7, the proper address of a body corporate is that body’s registered or principal office. It is not in dispute that the letter was sent to the Council’s principal office. Again, therefore, this requirement was satisfied.
73. Section 7 of the Interpretation Act then applies so as to deem that the Notice was received in the ordinary course of post, unless the intended defendant can prove to the contrary. The Council cannot prove to the contrary. Ms Allen has provided the court with the Recorded Delivery record and it is accepted that the letter arrived by post at

the Council's offices on 12 August 2019, where it was signed for by "Mark". Accordingly, the letter was received well in advance of 21 days before the proceedings commenced.

74. Ms Allen therefore complied with section 160(2). It was not necessary that, in addition, she complied with section 160(3)(a) because section 160(3)(a) is permissive only, and service in accordance with section 160(2) is good service even if section 160(3)(a) is not complied with, for the reasons we have given.
75. There is no justification, in our view, for reading in words to section 160(2) so as to impose an additional requirement that service is only valid if the notice is given or addressed to someone in authority, or the person or department responsible for dealing with notices. Mr McDermott acknowledged that he was inviting the court to read words into the section, but he said that this was necessary in order to achieve consistency with the statutory purpose. Otherwise, he submitted, in a large body corporate, a notice might easily be lost or overlooked and this would mean that the body corporate would not benefit from the period of advance notice that the statute provides for its protection.
76. We do not accept that it is necessary, or indeed permissible, to read words into the statute in this way. Moreover, we do not accept that the interpretation of section 160 which we favour imposes undue hardship upon large bodies corporate such as the Council. The Council is no more hindered by receiving a notice addressed to the "London Borough of Ealing" at its principal office than it would be by receiving such a notice addressed to "The Secretary or Clerk, London Borough of Ealing" at the same address. So far as we are aware, the Council does not have anyone whose post is Secretary or Clerk. Even if it does, s/he is not the person who has responsibility for dealing with s. 86(2) notices. In either case the Council would have to have internal processes in place to redirect the notice to the responsible employees, in this case the Housing Litigation Team. Responsibility lies with any body corporate to set up processes by which letters which do not identify an addressee by name or title can be forwarded to the right person to deal with them. This applies however large and busy the body corporate may be. We suspect that the Council must receive a significant amount of correspondence addressed only to the "London Borough of Ealing". We see nothing unduly unfair or burdensome in expecting a body corporate such as the Council to have in place a procedure for opening or redirecting such letters and then dealing with them appropriately.
77. A similar point was made by Sullivan J in *R (Gloucester City Council) v Keyway (Gloucester) Limited* [2003] EWHC 3012 (Admin), which was concerned with stop notices served by local authorities on limited companies under different legislation, and with enforcement action following a planning law breach. The issue was whether the stop notice had been validly served upon *Keyway* under section 184 of the Town and Country Planning Act 1990. There were two relevant statutory provisions concerned with the service of notices, compliance with either of which would be sufficient, namely section 329 of the 1990 Act, and s. 233 of the Local Government Act 1972. They were in different terms to s. 160 of the EPA, so that the decision itself is not directly in point, but Sullivan J observed at paragraphs 26-27:

"26. I appreciate that service of a document by a local authority may well lead to criminal liability, but that is no reason to adopt a strained and unnatural interpretation of

section 233. Since it enables documents to be served on corporate bodies by sending them through the post, it is to be expected that companies will make the necessary administrative arrangements to ensure that the right persons within the company hierarchy see important documents. I can see no reason why the same approach should not be adopted in relation to documents that are left at the company's registered or principal office. Any company that fails to make such arrangements does so at its peril since section 725(1) of the Companies Act 1985 (which was not referred to before the Magistrates) provides:

"A document may be served on a company by leaving it at, or sending it by post to the company's registered office."

27. Thus, any company worth its salt will make arrangements to ensure that documents left at its registered office will be dealt with administratively in such a way as to ensure that they reach the correct recipient within the company."

78. This is the responsibility of any body corporate. Responsibility should not lie with the complainant, who may be a lay person, to identify the person or department with responsibility for s. 82 notices and to address the letter accordingly. Nor should the responsibility be placed on them to identify a person in authority. They may not know who such a person would be.
79. We should make clear that we should not be taken as deciding that a complainant complies with s. 160 by specifically addressing the notice to a plainly inappropriate person, such as some one who works part time one day a month. This issue does not arise on the facts of this case.
80. Accordingly the District Judge was wrong to find that the Notice had not been validly served in this case. It was validly served by Ms Allen's solicitors on the Council in accordance with section 160(2).

Was service validly effected outside the terms of s. 160?

81. The question as to whether receipt of the letter by Mark at the Council offices was valid service for the purposes of section 82(6) depends on the application of common law principles. Because one is dealing with a company, a *persona ficta*, it is necessary to identify the relevant rules of attribution which permit receipt by an individual to be attributed to the company so as to amount to receipt by the company: see generally *Meridian Global Funds Management Asia Limited v The Securities Commission* [1995] 2 AC 500 at [7]-[11]. The application of these principles to service of a document on a particular employee, was considered in *Glencore Agriculture BV (Formerly Glencore Grain BV) v Conqueror Holdings Limited (The Amity)* [2017] EWHC 2893 (Comm); [2017] Bus LR 2090, in that case an email. In short, the question in this case is whether Mark had actual or ostensible authority to accept service of the Notice.
82. It is unfortunate that no evidence was provided to the District Judge as to the identity of Mark, or as to the circumstances and capacity in which he took and signed for the

letter containing the Notice on 12 August 2019. However, even without such evidence, it is safe to infer the following from the evidence placed before the District Judge:

- (1) Mark was an employee of the Council.
- (2) He was present at the Council's principal office when he signed for the letter.
- (3) Whatever the nature of Mark's job might be, such as post-room operative, or receptionist, it included signing for documents on behalf of the Council which arrived by Recorded Delivery and needed to be signed for. This is clear from the fact that Mark signed for Recorded Delivery correspondence on two separate occasions (the Notice and then the summons, some weeks later). The idea that Mark may have been an employee who just happened to be passing on two separate occasions and on each occasion took it upon himself to sign for letters even though it was not part of his job is too far-fetched to be contemplated. So is the possibility that it may have been two different Marks on the two occasions, given the apparent similarity of the signatures.
- (4) The Royal Mail employee or employees who delivered the two letters from Alexander Shaw to the Council regarded Mark as a suitably authorised person to sign on behalf of the Council.

83. In our judgement, the evidence, limited though it is, leads to the conclusion that Mark had express or implied authority from the Council to accept correspondence sent by Royal Mail Recorded Delivery on behalf of the Council. He was the one who signed for such letters at the Council's principal offices. The known facts do not realistically accept of any other explanation for Mark's actions. The alternative possibility that Mark was a passing busybody who took it upon himself to sign for the Recorded Delivery letter (and was permitted by the Royal Mail employee to sign on behalf of the Council) is unrealistic.
84. For these reasons, we conclude that the District Judge should have found, on the evidence before him, that notice had been validly effected on the alternative basis that the person who signed for the Notice had express or implied actual authority to accept service of correspondence such as this on behalf of the Council.

Conclusion

85. For the above reasons, the appeal should be allowed and the questions in the case stated should be answered as follows:
- i) The District Judge should have not have found that a notice under section 82(6) of the EPA 1990 must, by section 160(3) of the Act, be served on or given to the clerk or secretary of a body corporate or any identifiable person or department of the body corporate. The requirements of section 160(2) and s160(3), as regards notice, are permissive, not mandatory. A notice complies with s. 160 (2) and is validly served if delivered or posted to the registered or principal place of business of a body corporate when addressed solely to the body corporate without further identification of an addressee. The District Judge should have found that proper service of the Notice was proved in this case in circumstances in which the notice was addressed to the "London

Borough of Ealing” and was sent by Recorded Delivery post to the Respondent’s principal address. This was effective service in accordance with the EPA 1990, section 160(2).

- ii) The District Judge should also have found that valid service had been effected when, having been sent by post, the notice was signed for by “Mark” at the Respondent’s principal address. In light of the undisputed evidence, the District judge should have found that the person who accepted and signed for the notice had actual authority to accept service on behalf of the Respondent.