

Background and Decision

As with the majority of statutory nuisance cases, the facts of this case were as homely as they were simple. The claimant (K) sought judicial review of the dismissal of his appeal against his conviction for failure, without reasonable excuse, to prevent the recurrence of a statutory nuisance, namely the barking of a dog. K had been served with an abatement notice in terms of s80(1) of the Environmental Protection Act 1990 (EPA). The notice required him to prevent the repetitive and uncontrolled barking or whining of a dog at his home. It was undisputed that K had left the address at which the notice was served before the date on which it was served. The person who was present at the premises at the time was K's brother(X), who owned the dog. Therefore, K was not at the property at the relevant times. The abatement notice was delivered to the premises through the letter box. The notice was addressed to the 'occupier'. A month later the dog was still barking. A summons was sent to K at the address, reciting the terms of the abatement notice and alleging that K had failed to prohibit a recurrence of the nuisance contrary to s80(4) of the EPA. Six months later K was convicted in his absence in the magistrates court. K then appealed to the Crown Court which found that, despite K not owning the dog, and also not being present at the premises at the relevant times, K had been responsible for the nuisance and, also, that K had no reasonable excuse for not knowing that the notice had been served, in that he had failed to put in place a sensible arrangement to collect his post during his absence from the premises. K appealed to the Queen's Bench which quashed K's conviction.

The court held that K had not been, 'the person responsible' for the nuisance in that he was not the person, 'to whose act, default or sufferance the nuisance is attributable,' in terms of s79(7)(c) of the EPA. The person who was responsible for the nuisance was X who had plainly been in control of the dog at the relevant times. The abatement notice, therefore, should have been served on X. Whereas there was authority to the effect that a defendant who was charged with failing to comply with an abatement notice, could not invoke the defence of 'reasonable excuse' in terms of s80(4) (which makes provision for an offence for failure to comply with an abatement notice) such a rule was not absolute. K, in the instant case, was not present at the premises and there was no suggestion that he had sought to evade service of the notice. In the last analysis, the notice did not come to the attention of K. His failure, if any, was one to make a better arrangement to collect his post. Such a failure on the part of K could not deprive him of the opportunity to raise what would have constituted a cast iron point, had he appealed to the magistrates court. K's conviction, therefore, fell to be quashed.

Comment

This case serves as a salutary reminder to local authorities to make every possible effort to ensure that an abatement notice is served on the proper person. However, as in the instant case, this may present practical problems.