Case No: CO/5610/2017

Neutral Citation Number: [2018] EWHC 994 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2018

Before :

MR JUSTICE NICOL

- -

Between :

(1) Mark Stone	**Appellants**
(2) Salhouse Norwich Ltd	
- and -	
Environment Agency	**Respondent**

- -
- -

P. Strelitz (instructed by **Seddons**) for the **Appellants**
N. Ostrowski (instructed by **Miriam Tordoff, Environment Agency**) for the **Respondent**

Hearing date: 24th April 2018

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Judgment

Mr Justice Nicol :

1. On 28th March 2017 the Norwich Magistrates' Court convicted the Appellants of offences contrary to Regulations 12(1)(a), 38(1)(b) and, in the case of Mr Stone, of Regulation 41(1)(a) and (b) of the Environment Permitting (England and Wales) Regulations 2010 SI 2010 No. 675 ('the 2010 Regulations'). There was a third Defendant, a Mr Quinsey, but he has not appealed.

2. The Appellants asked the Justices to state a case for the opinion of the High Court. They agreed and the Case they stated was dated 1st September 2017. That allowed the Appellants to appeal to this Court by way of case stated. However, by Practice Direction E to Part 52 of the Civil Procedure Rules, paragraph 2.2, the Appellants had to lodge their notice of appeal within 10 days of their receipt of the Case (which I am told was on 4th September 2017). In fact the Appellants did not do so until 1st December 2017. They were thus about 2 ½ months late.

Extension of time for the notice of appeal

3. Of course the Court has power under CPR r. 3.9 to give relief from sanctions and to extend time. The Appellants, in their notice of appeal, asked for such relief and supported the application with the witness statement of their solicitor, Leon Golstein. He candidly accepts that he made a mistake, but submits that the adverse consequences should not be visited on his clients. I agreed to extend time. I said I would give reasons in my judgment. This I now do.

4. The approach to such applications is now governed by the well-known authorities of *Mitchell v News Group Newspapers Ltd.* [2013] EWCA Civ 1537 and *Denton v T.H. White Ltd* [2014] EWCA Civ 906.

5. The Court needs to proceed through three stages.

    i) The first is to ask whether the breach was serious or significant. In this case, the delay was substantial. I have no doubt that the breach was serious.

    ii) The second stage is to investigate why it occurred. As I have said, responsibility has been accepted by the Appellants' solicitor and he made a mistake.

    iii) The third stage is to evaluate all the circumstances so as to deal with the application justly including the factors specifically mentioned in r.3.9, namely (a) the need for litigation to be conducted effectively and at proportionate cost and (b) the need to enforce compliance with rules, practice directions and orders.

6. In this case, Mr Ostrowski for the Respondent draws attention to the seriousness of the breach and the importance of finality in litigation.

7. On the other hand, Mr Strelitz, for the Appellants was able to submit:

    i) There was no further cost to the Respondent because of the delay and the position of the Respondent is not otherwise prejudiced by the delay.

ii) The Respondent was aware of the Appellants' wish to challenge their convictions and, from at least, 1st September 2017, was aware of the Justices' willingness to state a case.

iii) If an extension is refused, that will be an end of the appeal.

iv) Had the Justices considered that there was no reasonably arguable issue for the determination of the Court, they would have refused to state a case. It can be inferred, therefore, that they considered that their decision did entail reasonably arguable points of law.

v) The obligation to comply with the Practice Direction is a factor, but it is not determinative.

8. For the reasons given in the previous paragraph, I decided that it would be right to extend time.

Introduction to the Factual Background

9. The 2nd Appellant is the owner of a site off Rice Way in Norwich ('the site'). The 1st Appellant is a director of the 2nd Appellant.

10. Mr Qunisey, trading as Salhouse Recyclers, took a lease of the site and used to operate a waste business at the site. He recycled mattresses. The Environment Agency served an Enforcement Notice on Mr Quinsey on 24th August 2015 and he ceased trading on or about that time.

11. At that stage there were about 471 tonnes of mattresses left on the site (about 20,166 of them).

12. The charge against the 2nd Appellant (the company) alleged that

> 'between 24th August 2015 and 8th June 2016 at land off Rice Way, Salhouse Industrial Estate, Norwich NR7 9AP, Salhouse Norwich Ltd knowingly permitted the operation of a regulated facility, namely a waste operation for the storage of waste, without being authorised by an environmental permit granted under regulation 13 of the [2010 Regulations].'

13. The charge against Mr Stone was in similar terms except that it was additionally alleged that the 2nd Appellant had acted with his consent or connivance or attributable to neglect on his part as a director of the 2nd Appellant.

14. I will return in due course to some of the factual findings made by the magistrates.

Legal Background

15. The 2010 Regulations have now been replaced by the Environmental Permitting Regulations (England and Wales) 2016 SI 2016 No. 1154, but, by regulation 77 of those Regulations and the numbering retained in the 2010 Regulations, the 2010 Regulations were preserved for the matters with which the magistrates and I am concerned.

16. Regulation 38 of the 2010 Regulations is the starting point for explaining the framework under which the Appellants were charged. So far as material, it provides,

> '(1) It is an offence for a person to …(b) knowingly cause or knowingly permit the contravention of regulation 12(1)(a)…'

17. Regulation 12(1)(a) says,

> '(1) A person must not, except under and to the extent authorised by an environmental permit (a) operate a regulated facility …'

18. The term 'operate a regulated facility' is defined by Regulation 7 as including

> '(b) carry on a waste operation…'

19. Regulation 2 then defines a 'waste operation' as

> 'recovery or disposal of waste'

20. Schedule 9 paragraph 2 of the 2010 Regulations provides that the terms 'recovery' and 'disposal' have the same meaning as in the Waste Framework Directive, which is a reference to Directive 2008/98/EC of the European Parliament and of the Council of 19th November 2008 (the 'WFD').

21. Article 3(15) of the WFD says that 'recovery' means,

> 'any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or the wider economy. Annex II sets out a non-exhaustive list of recovery operations.'

22. Article 3(19) of the WFD says that 'disposal' means,

> 'any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations.'

23. Annex I is then headed 'Disposal Operations'. 15 are listed and labelled D1 – D15. D15 is

> 'D15. Storage pending any of the operations numbered D1 to D14 (excluding temporary storage, pending collection, on the site where the waste is produced).'

24. Annex II is headed 'Recovery Operations'. 13 operations are listed and labelled R1 – R13. R13 says,

> 'R13 Storage of waste pending any of the operations numbered R1 to R 12 (excluding temporary storage, pending collection, on the site where the waste is produced).'

25. It was the Environment Agency's case that, during the period charged, the Appellants had knowingly permitted a waste operation to be carried on at the site in the form of storage pending removal or disposal. Both parties agreed that the exceptions in parentheses in D15 and R13 had no application on the facts of the present case. There was also no dispute that the mattresses qualified as 'waste'. Further it was not suggested that the Appellants had been acting in accordance with any permit granted by the Environment Agency or were entitled to any relevant exemption.

26. The Magistrates' Case records that the Appellants submitted that there had been no waste operation on the site during the period of the charges. The recycling business had been, they said, that of Mr Quinsey. What was done after his departure was rather to be viewed as a clean-up operation. Secondly, they argued that, if what was occurring was a 'waste operation', it was not one which they had knowingly permitted as Mr Stone (the 1st Appellant) had been out of the country when the Enforcement Notice had been served on Mr Quinsey on 24th August 2015. He had not been aware of the operation while he had been abroad. On his return he had co-operated with the Environment Agency in attempting to clear the site without incurring huge costs.

27. The Magistrates noted that the Respondent had submitted that the ongoing storage of the mattresses was a 'waste operation' and 'knowingly permitted' was made out if the Appellants were aware that a waste operation was taking place on the site and failed to prevent that waste operation from occurring. The Respondent also argued that the Appellants had assisted Mr Quinsey in setting up his mattress recycling business, offered advice on the business, encouraged bed and mattress companies to use Mr Quinsey's business. The Appellants had communicated with the Agency via email, there had been meetings between the parties, a remedial plan had been proposed by the Respondent, but the Appellants had not agreed to it. The waste remained on the site and the Appellants had made no attempt to move it.

Further Findings by the Magistrates

28. I have already referred to some of the findings made by the Magistrates. In addition, they recorded that Mr Stone had assisted Mr Quinsey with his business and that Mr Quinsey had been on the site on 27th October 2015 after the date that his business closed but during the period cited in the charges. They then added at paragraphs 9 – 18 the following,

> '9. We were satisfied to the criminal standard that the storage of the mattresses on the site between the dates charged was a waste operation within the terms of the legislation (as defined in the *Environmental Permitting (England and Wales) Regulations 2010* and the Waste Framework Directive (2008/98/EC) and was not in accordance with an environmental permit or any exemption registered at the site and which presented a significant environmental health and safety risk to the local community.
>
> 10. The charges were correctly brought, when the exemption notices were removed on 24th August 2015 the waste remained on the site and a waste operation was on going.
>
> 11. The First and Second Appellants were aware of the nature of the use of the site as far back as 2013 and as a result of numerous communications with the

Environment Agency thereafter. We were satisfied that the Second Appellant knowingly permitted the waste operation to continue and that the First Appellant consented and/or connived in knowingly permitting the waste operation to take place.

12. We did not share the Appellants' view that the actions of Mr Stone and Salthouse Norwich Limited between the dates charged were remedial and amounted to a 'clean-up' of the site.

13. It was accepted that 40 tonnes of an estimated 471 tonnes of mattresses were removed from the site after the enforcement notice was served on Mr Quinsey. We rejected that there was any ongoing 'clean-up' operation after hearing the evidence of Jack Coleman and Roger Thomas of the Environment Agency. We were satisfied that the waste operation continued after 24th August 2015.

14. We were also satisfied beyond reasonable doubt that the Appellants had knowingly permitted the waste operation. Mr Stone was aware of the mattress recycling business that the Third Defendant, Mr Quinsey, was operating. Mr Stone was also aware that the waste had been left on the site after the Third Defendant Mr Quinsey's business had ceased trading.

15. It is not disputed that the First Appellant was abroad at the time when the enforcement notice was served on the Third Defendant Mr Quinsey. However, on the Appellants' own admission there was communication between the Environment Agency and the First Appellant via e-mail at this time. We were satisfied after hearing the evidence of Jack Coleman and Roger Thomas that whist communication was taking place between the Environment Agency and the First and Second Appellants there was no meaningful engagement by the Appellants in attempting to facilitate the clean-up of the site.

16. It was accepted that no explanation was provided on behalf of the Environment Agency as to why the Appellants were not prosecuted for failing to adhere to the Enforcement Notice requiring the waste to be removed from the site as occurred with the Third Defendant Mr Quinsey. Why the Environment Agency did not pursue this course of action was not a matter for our consideration. We needed to be satisfied that we were sure the charges preferred were made out on the evidence that we heard.

17. We carefully considered the evidence in light of the matters as charged and gave particular scrutiny to the wording of the charges. We accept that the Environment Agency did not prosecute the Appellants for failing to adhere to the Environment Notice (as the Appellants contend they should have). However, there was no application for a stay of proceedings in order for an abuse of process argument to be considered in the conduct of these proceedings.

18. We found the evidence of the prosecution witnesses credible and compelling. We acceded to the Appellants' trial counsel and made no adverse inference from the First Appellant's failure to give evidence at the trial. We acknowledged the good character of the First Appellant.'

29. On 5th May 2017 the 1st Appellant was sentenced to a 12 month community order with a requirement to undertake 150 hours of unpaid work. The 2nd Appellant was fined £5,000. Both were required to pay victim surcharges. Each Appellant was ordered to pay £7,032.99 towards the costs of the prosecution.

30. The Magistrates have stated two questions for the opinion of the High Court.

31. Question 1 is

> 'Were the Magistrates entitled to find that there was a continuing 'waste operation' as defined in the 2010 Regulations and Waste Framework Directive (2008/98/EC) consisting of the storage or waste between the dates charged?'

32. Question 2 is

> 'Were the Magistrates entitled to find that the offence of "knowingly permitting" the operation of a regulated facility did not require the prosecution to establish that the accused took a positive act within the period covered by the charges, but simply knew such a waste operation (as defined) was taking place?'

Should the Magistrates be asked to amend their Case?

33. By the Senior Courts Act 1981 s.28A the Court has power to send the Case back to the magistrates for amendment.

34. In his skeleton argument for the hearing, Mr Ostrowski submitted that I should ask the magistrates to amend their Case in two ways. After hearing his oral submissions, I concluded that neither of his proposed amendments was necessary and I should not therefore request the magistrates to make them. I said that I would give my reasons in my judgment and I do so now.

35. First, Mr Ostrowski submitted Question One should be amended to read, 'Were the Magistrates entitled to find that there was a continuing 'waste operation' as defined in the 2010 regulations and WFD consisting of storage of waste *pending recovery or disposal* between the dates charged.' [proposed additional words emphasised].

36. I considered that this amendment was unnecessary. I have already quoted the charge against each defendant. It can be seen that the Magistrates have appropriately tracked the language of the charge in their first question as it presently stands. Even without the amendment it was open to the Respondent to argue that the magistrates were entitled to find that there was a continuing waste operation during the charge period which consisted of storage pending removal or disposal. It was immaterial whether the additional words which Mr Ostrowski wanted to be included by amendment were or were not added to the question posed by the Magistrates.

37. Mr Ostrowski secondly wished the case to be amended so as to add further documents to those already attached to the Case. He wished to add all of the documentary evidence and witness statements which were before the Magistrates. The Case presently included some documents but, Mr Ostrowski submitted, the selected documents were insufficient for him to deal with an argument in the Appellants' skeleton argument that the Respondent was wrong to charge them with an offence under regulation 38 of the 2010 Regulations.

38. It can be seen from paragraph 17 of their Case that the Appellants had raised before the Magistrates the decision to charge them with this offence, rather than prosecuting them for failing to adhere to an Enforcement Notice. However, as the Magistrates appositely observed, 'there was no application for a stay of proceedings in order for an abuse of process argument to be considered in the conduct of these proceedings.' In those circumstances, as the Magistrates rightly said, their task was to consider whether the charges, which had been brought, were proved. My task is confined to responding to the questions posed by the Magistrates. Mr Strelitz said he did not rely on the passages to which Mr Ostrowski referred in order to make an abuse of process challenge (he accepted that would not be proper), but to show that, even if the Court adopted the interpretation of regulation 38 for which he contended, there would not be a lacuna in the Environment Agency's powers.

39. In my view, both parties could properly marshal their respective submissions by reference to the law and authorities. It was not necessary for me to see all the documentary evidence before the Magistrates (furthermore, since the Magistrates heard oral evidence, even that would have been an incomplete picture of the evidence before them). Indeed, I was sceptical as to the need to attach to the Case those documents which had been included. In any event, since the exercise with which I was engaged did not require me to see further evidence, I also refused this application by the Respondent. After reserving judgment, I reviewed the documents appended by the Magistrates to their Case. This confirmed my view that they were not necessary for me to resolve the questions posed by the stated Case..

Question 1: Were the Magistrates entitled to find that there was a continuing 'waste operation' between the dates charged?

40. Mr Strelitz submitted that they were not. He argued:

i) After Mr Quinsey's activity stopped on 24th August 2015 there was no 'operation' on the site at all.

ii) Category D15 of Annex I and Category R13 of Annex II were not apt to describe what happened thereafter. The mattresses were not then awaiting disposal or recovery. Mr Strelitz said they just had to have their location changed by being moved off site as required by the Respondent.

iii) The Appellants wished, as he put it, to expel the mattresses from the site. There was no deliberate act of storage. In common parlance 'storage' connoted some positive act of retention. Here there was no more than passive sufferance of the mattresses remaining on the site.

iv) After 24th August 2015 the only work done on the site was done by Mr Quinsey and that was under compulsion from the Respondent.

v) There would be no lacuna in the Respondent's powers if this interpretation was adopted. The Environmental Protection Act 1990 ('EPA 1990') s.59 allows the Environment Agency to issue an enforcement notice to an occupier and, it is a summary offence for the occupier to fail to comply with the notice without reasonable excuse (see s.59(5)). However, there are two critical differences. First, the occupier may challenge the enforcement notice by

appealing to a magistrates' court (see s.59(2)) and the notice is suspended until the determination of the appeal (see s.59(4)). Secondly, the penalty is no more than a fine (s.59(5)). These provisions are directed at the occupier of land, but essentially the same regime applies in relation to the owners of land - see EPA 1990 s.59ZA (added with effect from 6th April 2006 in England by Clean Neighbourhoods and Environment Act 2005 s.50(2)).

vi) The interpretation adopted by the Magistrates had effectively imposed strict liability on land owners whose commercial tenants ceased trading and abandoned waste on their site.

41. Mr Ostrowski argued that the Magistrates were entitled to find that there had been a continuing 'waste operation' during the period charged. He submitted,

i) The 2010 Regulations were intended to implement the WFD and should, as far as possible be interpreted consistently with that directive. Recital 30 of the Preamble to the WFD noted that it was intended to implement the precautionary principle and the principle of preventative action enshrined in Article 174(2) of the Treaty For the European Union. Likewise those principles had informed the interpretation of the word 'waste' by the Court of Justice of the EU in *Arco Chemie Nederland Ltd v Minister van Volkshuisvesting Ruimtelijke Ordening en Milieubeheer (C0418/97)* at [39]. The interpretation adopted by the Magistrates was also consistent with those principles.

ii) D15 and R13 showed that storage pending disposal or recovery was a 'waste operation'.

iii) There was no authority for the Appellants' argument that storage required some positive act of retention. The Magistrates were entitled to find that, even after 24th August 2015 what was happening was that the mattresses continued to be stored at the site.

iv) There was no meaningful distinction between storage pending disposal or recovery on the one hand and passive sufferance pending the 'expulsion' of the mattresses as the Appellants contended.

v) It had also to be remembered that the charge against the Appellants was that they 'knowingly permitted' a waste operation. Thus, it was not alleged that they themselves were storing the mattresses but that they knowingly permitted that waste operation.

vi) It did not help the Appellants to point to other powers available to the Respondent. If the Respondent was right in its contention that the facts of the present case constituted an offence under regulation 38, it was entitled to prosecute for that offence and, if the evidence justified that conclusion, the Magistrates were right to convict. It was immaterial that the Respondent might have taken a different course instead. As it happens, the Respondent was entitled to view a prosecution under regulation 38 as a more effective course because of the wider range of sentencing powers.

42. In his written submissions, Mr Ostrowski argued that it was significant that the Appellants had not made a submission of No Case to Answer at the conclusion of the case for the prosecution in the Magistrates' Court. In oral argument he accepted that, while this forensic point was open to him, he was not contending that the Appellants were precluded from arguing as they did in relation to question 1 because they had not made such a submission to the Magistrates.

43. I have set out the competing arguments. It is sufficient for me to say that despite Mr Strelitz's contentions, I was clear that those of Mr Ostrowski were to be preferred and the first question posed by the Magistrates should be answered in the affirmative.

Question 2: Were the Magistrates entitled to find that the offence of 'knowingly permitting' the operation of a regulated facility did not require the prosecution to establish that the accused took a positive act within the period covered by the charges, but simply knew such a waste operation (as defined) was taking place?

44. Mr Strelitz argued that the Magistrates were not entitled so to find. He contended:

i) After 24th August 2015 the Appellants permitted no operation of a regulated facility. Instead they sought to engage with the Respondent as to how the site could be cleared at proportionate expense.

ii) If the Respondent thought that the Appellants were not doing enough, they could have issued an enforcement notice spelling out what further steps in their view should be taken. Had they done this, the Appellants would have had an opportunity to challenge the required steps in an appeal to a magistrates' court pursuant to EPA 1990 s.59ZA(5) ands.59(2).

iii) The Appellants permitted nothing. They had been left with mattresses on their site.

45. Mr Ostrowski argued that the Magistrates were entitled to take the course that they did.

i) Regulation 38 provides that there is an offence if a person 'knowingly cause[s]' the contravention of regulation 12(1)(a) or if he 'knowingly permit[s]' such a contravention. The juxtaposition between causing (or knowingly causing) and knowingly permitting an offence has been well known in Environmental law for many years. *Alphacell Ltd. v Woodward* [1972] AC 824 had concerned an appellant charged with 'causing' pollution, but the House of Lords had also commented on what was involved by 'knowingly permitting'. Thus at p.834 Lord Wilberforce had said,

> 'knowingly permitting which involves a failure to prevent the pollution, which failure must, however, be accompanied by knowledge.'

Lord Salmon at p.849 said,

> 'The creation of an offence in relation to permitting pollution was probably included in the section so as to deal with the type of case in which a man knows that contaminated effluent is escaping over his land into a river and does nothing at all to prevent it.'

In that case the Lords were concerned with an offence under Rivers (Prevention of Pollution) Act 1951 s.2(1) of which provided,

> 'Subject to this Act, a person commits an offence punishable under this section (a) if he causes or knowingly permits to enter a stream any poisonous, noxious or polluting matter.'

Under that legislation, therefore, the 'causing' version of the offence was not qualified by the word 'knowingly'. Regulation 38 in that sense is different, but I do not regard that as material in relation to their Lordships' comments made on the 'knowingly permits' alternative.

ii) *Walker and Son (Hauliers) Ltd v Environment Agency* [2014] EWCA Crim 100 was an appeal against conviction of an offence of knowingly permitting the contravention of regulation 12 under regulation 38 of the 2010 Regulations. The trial judge had been HHJ Lea who, as can be seen from [18] of the Court of Appeal's judgment, had directed the jury to consider three matters:

> '(1) Did the Company have knowledge of waste operations on their land?
>
> (2) If so, did the Company permit i.e. allow or fail to prevent, those waste operations?
>
> (3) Were the waste operations, of which the Company had knowledge, in accordance with an environmental permit?'

The central argument before the Court was whether the judge had erred in not also directing the jury to consider whether the defendant had known that the operation was not in accordance an environmental permit. The Court rejected that argument and found at [37] that the Judge had been correct in his interpretation of regulation 38 and the appeal against conviction was dismissed.

iii) Accordingly, Mr Ostrowski submits, the 'knowingly permitting' alternative does not require that the accused took a positive act.

46. I recognise that *Alphcell Ltd v Woodward* (above) was dealing with the 'active' limb of the offence (i.e. that which penalised 'causing' pollution), but its commentary on the purpose of including both the 'active' and the 'passive' (i.e. 'knowingly permitting') limb is instructive. *Walker* was dealing with a rather different point, but nonetheless the Court of Appeal endorsed Judge Lea's direction to the jury which included the alternative of failing to prevent the waste operation. Again, I have come to the clear conclusion that Mr Ostrowski's submissions are to be preferred. The Magistrates were right that the prosecution did not have to prove that the prosecution took a positive act within the period covered by the charges.

47. That, it seems to me is the essential issue posed in their second question. That question concludes 'but [the prosecution must prove that the defendant] simply knew such a waste operation (as defined) was taking place'. That way of phrasing it does not quite capture the 'knowingly permitting' alternative. As the House of Lords and

Court of Appeal has said, if this alternative is charged it must be proved that at least the Defendant failed to prevent the waste operation from occurring.

48. However, this qualification does not assist the Appellants. As the Magistrates have recorded (see paragraph 4 of their Case) the Respondent had contended that the Defendant's failure to prevent the waste operation from occurring was a necessary element for them to prove. The Appellants' contention (as summarised in paragraph 3 of the Case) was, not that they had taken steps to prevent storage of the mattresses, but that they were initially unaware of the enforcement notice and had then co-operated with the Environment Agency in what was, in effect, a clean-up operation. The Magistrates found that the waste operation continued after 24th August 2015 (see paragraph 13 of their Case) and furthermore that 'the Appellants had knowingly permitted the waste operation' (paragraph 14). Mr Stone had known that the waste had been left on the site after Mr Quinsey's business ceased trading. They rejected the Appellants' characterisation of what took place after 24th August 2015 as a 'clean-up operation' (see paragraphs 12 and 13 of the Case).

Conclusion

49. Question 1: Were the Magistrates entitled to find that there was a continuing 'waste operation' as defined in the 2010 regulations and Waste Framework Directive (2008/98/EC) consisting of the storage of waste between the dates charged?'

Answer: yes.

50. Question 2: Were the Magistrates entitled to find that the offence of 'knowingly permitting' the operation of a regulated facility did not require the prosecution to establish that the accused took a positive act within the period covered by the charges, but simply knew such a waste operation (as defined) was taking place?

Answer: The magistrates were right to find that the offence of 'knowingly permitting' the operation of a regulated facility did not require the prosecution to establish that the accused took a positive act within the period covered by the charges. It was sufficient for the prosecution to prove that the accused knew such a waste operation (as defined) was taking place and did nothing to prevent it. The Magistrates were entitled to find that was the case.

51. It follows that the appeal is dismissed.