Neutral Citation Number: [2026] EWCA Civ 1402

Case No: CA-2026-000147

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
HH JUDGE JARMAN KC (sitting as a Judge of the High Court)
[2025] EWHC 3312 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2026

Before :

LORD JUSTICE MALES
LORD JUSTICE NUGEE
and
LORD JUSTICE MILES

- -

Between :

CAERPHILLY COUNTY BOROUGH COUNCIL	**Appellant**
- and -	
R (on the application of RICHARD JAMES WILLIAMSON)	**Respondent**
- and-	
SUZANNE PARSONS	**Interested Party**

- -
- -

Lewis Harrison (instructed by **Caerphilly County Borough Council**) for the **Appellant**
Gordon Wignall (direct access) for the **Respondent**
The **Interested Party** was not represented and did not attend

Hearing date : 20 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Miles :

Introduction

1. This case is about cat fouling. The respondent, Mr Richard Williamson, complained to the appellant council that his neighbours' cats kept coming into his front garden and leaving faeces. He said that this was prejudicial to his own health and that of his young child, and requested that the appellant should investigate whether there was a statutory nuisance.

2. After some investigations, including a site visit, the appellant told the respondent in an email dated 11 November 2024 that it had concluded that there was no statutory nuisance ("the Determination").

3. The respondent was dissatisfied. He first engaged the appellant's review procedures and, when this did not satisfy him, sought judicial review of the Determination. After a full hearing, His Honour Judge Jarman KC sitting as a judge of the High Court (the "Judge") made an order setting the Determination aside.

4. The Judge decided that the appellant had made a number of public law errors in its approach to its investigations. He ordered the appellant to reconsider the complaint in accordance with his judgment. The Judge did not decide that there was a statutory nuisance: rather, he decided that the matters complained of were capable in principle of being a statutory nuisance under section 79 of the Environmental Protection Act 1990 (the "EPA").

5. The appellant now appeals from the Judge's decision.

The facts

6. On 2 October 2024 the respondent emailed Ms Woodland at the appellant to make a formal complaint against his neighbour regarding an ongoing issue with their two cats fouling in his front garden. He said that the fouling had been going on for some months and that he had unsuccessfully tried various ways of deterring the cats. He said that he had collected CCTV footage which showed the cats fouling his garden. He said that the fouling had "escalated to a point where [he] believe[s] it constitutes a statutory nuisance and an environmental health risk to [his] family". He specifically raised health risks associated with cat faeces including toxoplasmosis.

7. An environmental health officer of the appellant responded on the same day explaining that the appellant could not investigate the complaint because it did not fall within the remit of statutory nuisance. The reason given was that animals moving freely between properties cannot be a statutory nuisance under section 79(1)(f) of the EPA.

8. The respondent responded the next day and asked the appellant to reconsider this matter and conduct a proper investigation.

9. After further emails, the appellant agreed to open an investigation and receive the CCTV evidence which the respondent had collected. The respondent enclosed CCTV footage on 9 October 2024. He also said that there were many instances of fouling which had not been captured on camera. He said that there were areas in his front garden which the cameras did not record, but where there had been fouling. He also

said that the neighbours had seen the footage and confirmed that the two cats belonged to them.

10. By email dated 22 October 2024 the appellant's officer asked whether there had been further incidents of fouling and asked for further evidence. In reply the respondent said that it had lessened which he put down to bad weather. He said that there were incidents of fouling in the area not covered by the cameras, but there was footage of one of the cats leaving that area and shortly after he found fresh mess. On 24 October 2024 he sent further footage, which he said did not show fouling, but did show one of the cats entering his property, after which there was fresh mess in the area they had been in, the most recent such incident being the previous night.

11. On 8 November 2024 the officer repeated the request for fresh evidence and said that the last videos had not been viewed as they did not contain footage of fouling. The officer requested that only footage showing fouling be sent in the future. In reply the respondent repeated his point that the cameras did not cover all areas of his garden.

12. That led to the challenged Determination of 11 November 2024, in which the appellant's officer stated:

> "You are correct that we do often request logs regarding instances of "nuisance", and that is what you have been providing with your CCTV evidence. There is no more effective means to monitor than your own CCTV and as you have been forthcoming with providing it, I felt it best to continue in this way. This would effectively build up a log of those instances. As stated I didn't view the videos as you said yourself no fouling was witnessed. The fouling is the focus of the investigation and cats in your garden alone, would not be within the scope of statutory nuisance.
>
> I have now conducted a visit to the subject address to assess the state of the property, as well as how the animals are kept. I am satisfied that there are adequate provisions for the cats to foul inside the property if required. We have spoken about their procedures and they have made changes to the litter trays to encourage one of the cats that had previously not liked using them. I am satisfied that the procedures are adequate, and they are conscientious about ensuring the cats have the correct facility.
>
> With regards to the law, as discussed previously, cats are not governed by the same roaming laws as dogs & livestock are. The common law principle is that there are no laws governing control, they have a "right to roam". Cat owners are also required to make considerations of welfare and not letting cats outside when they are accustomed to it, can be detrimental to their welfare. Based on the current evidence, state of the property, the fact that only three cats are kept and the provisions in place, I am satisfied that the subject is not keeping animals in such a manner as to be prejudicial to health or a nuisance."

13. In November and December 2024, the appellant carried out reviews under stages 1 and 2 of its complaints procedure, but the complaint against it was not upheld.

14. On 11 February 2025 the respondent issued a judicial review claim form. On 29 March 2025, His Honour Judge Keyser KC sitting as a judge of the High Court refused permission to apply for judicial review on the papers. However, on 3 July 2025 following an oral hearing at which the respondent represented himself and no other party attended, the Judge granted permission to apply for judicial review on all grounds.

15. The Judge heard the application for judicial review on 8 December 2025. On 19 December 2025 he delivered judgment ([2025] EWHC 3312 (Admin)).

16. On 14 January 2026 the Judge granted a declaration that the appellant's "decision dated 11 November 2024 determining that the matters complained of by [the respondent] did not amount to a statutory nuisance within the meaning of section 79 of the Environmental Protection Act 1990, was not a valid discharge of the [appellant's] duty under Section 80 of the Act". He quashed the decision of 11 November 2024 and ordered the appellant to redetermine the complaint in accordance with the principles set out in his judgment.

17. Following the judgment the appellant re-determined the original complaint. On 24 March 2026 the Director of Environment and Regulatory Services for the appellant wrote to the respondent advising that following the judgment he carried out a "review of the evidence submitted in relation to a complaint of neighbour's cats fouling" at his property. The letter explained that the evidence "does not support an Accumulation or Deposit Prejudicial to Health as defined by Section 79(1)(e) of [the EPA 1990]". We heard no argument about this redetermination, including whether the appeal was academic; nothing said below should be taken as expressing any views about the redetermination.

Relevant provisions of the EPA

18. Part III of the EPA is headed "Statutory Nuisances and Clean Air".

19. Section 79 provides as far as material as follows:

> "**Statutory nuisances and inspections therefor**
>
> (1) Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—
>
> (a) any premises in such a state as to be prejudicial to health or a nuisance;
>
> (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
>
> (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

> (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
>
> (e) any accumulation or deposit which is prejudicial to health or a nuisance;
>
> (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
>
> (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
>
> (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
>
> (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
>
> (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
>
> (h) any other matter declared by any enactment to be a statutory nuisance;
>
> and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.
>
> […]
>
> (7) In this Part—
>
> "person responsible"—
>
> (a) in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;
>
> "prejudicial to health" means injurious, or likely to cause injury, to health."

20. Section 80 provides as far as material as follows:

> "**Summary proceedings for statutory nuisances**
>
> (1) Subject to subsection (2A) where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve

a notice ("an abatement notice") imposing all or any of the following requirements—

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) Subject to section 80A(1) below, the abatement notice shall be served—

(a) except in a case falling within paragraph (b) or (c) below, on the person responsible for the nuisance;

(b) where the nuisance arises from any defect of a structural character, on the owner of the premises;

(c) where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises.

(3) A person served with an abatement notice may appeal against the notice to a magistrates' court or in Scotland, the sheriff within the period of twenty-one days beginning with the date on which he was served with the notice.

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

[…]

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(8) The defence under subsection (7) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f), (fa) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises; …"

The Judge's decision

21. Having set out the facts and the statutory framework, the Judge referred to the decision of Carnwath J in *R v Carrick DC ex p. Shelley* [1996] Env LR 273 ("*Shelley*"). The Judge noted at [21] that Carnwath J had concluded that the local authority had not addressed the crucial issue of whether there was a statutory nuisance within the meaning of the EPA and that the appropriate remedy was a declaration that it had not discharged its duty under section 80 of the EPA.

22. The Judge concluded in [22] that the test for "prejudicial to health" was objective, so that it was not permissible to take into account the individual health requirements of potential occupiers.

23. In [28] the Judge said that he did not consider that the cases he had been referred to concerning private nuisance assisted in relation to the matters before him.

24. In [29] the Judge referred to the case of *Buckle v Holmes* [1926] 2 KB 125 in which this court determined that the owner of a cat who had strayed into neighbouring land and killed pigeons was not liable in trespass but said at [30] that this did not assist in determining whether the matters complained of in the present case were capable of falling within s. 79 of the EPA.

25. The Judge then turned to the public law complaints before him. He explained in [31] that the essence of the respondent's challenge was that the appellant had approached his complaint by considering only the manner in which the cats were kept (s. 79(1)(f)) rather than asking whether there could be a statutory nuisance because the fouling amounted to deposits prejudicial to health (s. 79(1)(e)).

26. In [33] the Judge addressed the appellant's submission that transient fouling on other land could not amount to "any deposit" and what is contemplated by s. 79(1)(e) is a deposit on the land of the person said to be causing the nuisance.

27. In [34] the Judge noted that the respondent had not specifically referred to subsection (1)(e) but found that in substance he had clearly raised the issue that the fouling was deposited on his land and was prejudicial to health. It was the fouling in his garden to which he objected, on health grounds. The Judge held that the appellant should have approached the complaint on that basis.

28. In [35] the Judge rejected the submission that the words "any deposit" were to be read in the restrictive way suggested by the appellant. *Shelley* showed that material swept onto a beach by the sea could in principle amount to a deposit within s. 79(1)(e). The Judge said that the same "may apply to the fouling" of which the respondent complains.

29. In [36] the Judge addressed the appellant's submission that there was no evidence that any such deposits were prejudicial to health. He found that the appellant had not considered this as it should have done. He also noted that in the bundle there was NHS guidance about potential risks from cat faeces, including toxoplasmosis. The Judge accepted in [37] that there was no evidence that these cats carried the parasites that give rise to the associated health risks. He concluded however that the cat droppings in the present case were capable of being prejudicial to health and that the appellant should have investigated this.

30. In [40] he concluded that the principal ground had been made out and that was sufficient for the claim to succeed.

31. The Judge then addressed the other grounds briefly. The second ground concerned the allegation that the appellant had made no inquiry as to the health risks. This overlapped with the first ground. The Judge held that the way in which it should address the health risks was a matter for the appellant, and noted that in *Shelley* the court had referred to the possibility of expert evidence.

32. The third ground concerned the treatment of the CCTV evidence. It was agreed at the hearing that the CCTV showed six cases of direct fouling with two being more equivocal (but where there was some extraneous evidence tending to confirm fouling). The Judge explained in [43] that the nub of the complaint was that the appellant's officer had refused to review footage where there was no direct evidence of fouling. The Judge accepted the respondent's evidence that there were limitations in the CCTV coverage and that he had explained that some of the footage was of cats being in the areas where he had later found droppings. The Judge concluded that the appellant had erred in refusing to take this evidence into account.

33. The fourth ground was that the appellant had taken account of the common law principles, including that cats had a right to roam. The Judge held in [44] that the appellant had taken these factors into account but that they were not relevant to whether there was a statutory nuisance within the meaning of s. 79.

34. The fifth and sixth grounds either did not arise or added nothing to the first four.

35. In [47] the Judge said,

> "For the reasons given above, the Determination cannot stand, and the complaint must be redetermined in accordance with the principles set out above. I make it clear that whilst the decision-making process should have regard to such principles, nothing in this judgment should be taken as expressing a view one way or the other on the outcome of the redetermination. That is a matter for the Defendant, acting lawfully. As in the *Shelley* case, in my judgment the appropriate relief, subject to submissions, is a declaration along these lines in the expectation that the Defendant will act upon it."

36. For completeness I note that it seems that the Judge was not taken to s. 80(8) and he therefore wrongly assumed that the defence in s. 80(7) would potentially be available to the cats' owners. Nothing however turns on the point on this appeal.

The grounds of appeal

37. There are four grounds of appeal: (1) the Judge erred in law in concluding that the complaint fell to be determined under s. 79(1)(e) of the EPA as "deposits" within the meaning of that provision; (2) he erred in both fact and law in finding that the complaint ought to have been considered under s. 79(1)(e) rather than s. 79(1)(f); (3) he erred in law when considering the appellant's approach to viewing CCTV; and (4) he erred in law in finding that the Local Authority incorrectly relied upon common law principles.

38. At the hearing of the appeal, counsel for the appellant confirmed that if the appeal failed under the first ground, the others would not separately justify the appeal. I shall therefore concentrate on the first ground.

39. The appellant's challenge under this ground was founded on the proposition that in order for something to constitute "any deposit" within the meaning of s. 79(1)(e), it had to be shown that the thing had been deposited by a purposeful or wilful act.

40. It does not appear that this argument was run before the Judge, but counsel for the respondent did not object to it being taken before us and I shall address it.

41. I am unable to accept the appellant's argument for a number of reasons.

42. The first is that there is no basis for it in the statutory text. Section 79(1) defines statutory nuisance by reference to the listed "matters". Those matters are all things. They include anything from premises, to smoke, fumes or gases, to smells, to artificial light, and to noise. In each case there is also a requirement that the listed item is "so as to be prejudicial to health or a nuisance".

43. The provision contains no requirement that any person must have acted purposefully or wilfully in relation to the listed matters. The matters listed are physical things or states of affairs and are not concerned with a person's responsibility. The question whether something falls within the category of a statutory nuisance is separate from that of the responsibility of any person who may have caused or suffered the existence of the relevant matter.

44. The specific definition arising on this appeal is "any accumulation or deposit which is prejudicial to health or a nuisance". This is all about the physical world and has nothing to do with anybody's actions or responsibility.

45. Counsel for the appellant submitted that the word "deposit" entails an act of depositing, so that there is a causal element. I am unable to accept this. The word deposit is being used here as a noun and not as a verbal participle. The adjacent noun, accumulation, dispels any possible doubt. Read in context the subsection is concerned with the existence of things, and not how they came about, or any question of agency.

46. Under the tailpiece at the end of s. 79(1) the relevant local authority is required to cause its area to be inspected from time to time to detect any statutory nuisances and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint. The duties of inspection and investigation are concerned with whether there is a statutory nuisance falling within the subsection, not with who has caused or suffered it to happen.

47. The issue of responsibility comes in at the next stage, under s. 80 of the EPA. Under that provision where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur in its area, it shall serve an abatement notice (s. 80(1)). It is to be served (with exceptions which it is not necessary to consider here) on the person responsible for the nuisance (s. 80(2)). The person responsible for the nuisance means (so far as relevant) the person to whose act, default or sufferance the nuisance is attributable (s. 79(7)).

48. As this court explained in *R (on the application of Ball) v Hinckley & Bosworth Borough Council* [2024] EWCA Civ 433, [2025] 1 All ER 1025, there are two distinct stages. The local authority has first to decide whether there is a statutory nuisance (s. 79). If it does so decide, it is obliged to issue an abatement notice (s. 80).

49. These two stages (investigation of what constitutes a statutory nuisance and service of a notice on those responsible) have been found in the statutory predecessors of the EPA. Part III of the EPA has a long statutory ancestry. As explained by Mummery LJ in *R v Bristol City Council, ex p. Everett* [1999] 1 WLR 1170, 1176ff, this includes the Nuisances Removal Act for England 1855, the Public Health Act 1875, and the Public Health Act 1936 (referred to below as the "1855 Act", the "1875 Act" and the "1936 Act").

50. Though the statutory wording has changed the same legislative technique has been used as the means of defining the relevant nuisances as statutory ones. The legislation has listed a series of things or states of affairs which are injurious or prejudicial to health or a nuisance. For example, section 8 of the 1855 Act provided:

> "The word "nuisances" under this Act shall include—
>
> Any premises in such a state as to be a nuisance or injurious to health;
>
> Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health;
>
> Any animal so kept as to be a nuisance or injurious to health;
>
> Any accumulation or deposit which is a nuisance or injurious to health; …"

51. The 1855 Act then gave the local board or the inspectors appointed by them powers relating to "the removal of nuisances."

52. The second reason for rejecting the appellant's submission is that it would import a responsibility test into the definition of a statutory nuisance different from the statutory one found in s. 79(7). In my view that is particularly improbable and would lead to confusion. There is a single test of responsibility and it is expressly stipulated.

53. The third reason why the submission cannot be accepted is that it is not supported by any of the authorities relied on by the appellant. Indeed in my judgment the cases all go the other way.

54. The first authority relied on by the appellant was *Draper v Sperring* (1861) 10 CB (NS) 113. Mr Sperring, the inspector of nuisances appointed under the 1855 Act, preferred a complaint against Mrs Draper, who had a right to hold markets in Crewkerne in Somerset. She had put up hurdles to pen sheep on a pavement on market days. Sheep belonging to farmers bringing them to market had left dung or filth which had not been removed. Mr Sperring said that this constituted a deposit or accumulation which was a nuisance under the Act. The justices concluded that the deposits were a statutory nuisance and that they resulted from the act or sufferance of Mrs Draper. They ordered her in the future to remove any dung or filth deposited by reason of penning the sheep.

Mrs Draper appealed. The relevant question of law was whether she was liable under section 12 of the 1855 Act as the person by whose act, default, permission or sufferance the nuisance arose. The decision of the justices was upheld.

55. There is nothing in this case to support the appellant's argument that the deposits of sheep dung were the result of somebody's purposeful or wilful act. On the contrary the only question of responsibility for the deposit arose under the statutory wording of s. 12 of the 1855 Act. The case supports the two stage approach already described.

56. What the case does establish though is that animal droppings are capable of amounting to a deposit or accumulation and (if the other elements of the test are established) a statutory nuisance.

57. In *The Mayor etc. of Scarborough v The Rural Sanitary Authority of the Scarborough Poor Law Union* (1876) 1 Ex D 344, the appellant sanitary authority had deposited ashes and refuse collected in their area in a field so that it could be collected and carried away by farmers. The sanitary authority did not own the field and had no control over it once the waste was deposited. The deposit was a statutory nuisance and the justices made an order under the 1875 Act against the sanitary authority to abate it and prohibit its recurrence. The question for the court was whether the order for abatement could properly be made since its performance would involve trespass. The court held that it could not, but upheld the prohibition on future deposits.

58. The appellant contended that this case showed that what mattered was the act of depositing the waste and not the mere existence of the deposit. The appellant argued that this showed that a deposit for the purposes of the statute was something placed purposefully or wilfully. The authority does not support this argument. The question submitted to the court was whether on the facts stated the sanitary authority was liable to be called upon to abate the nuisance in the manner and form set out in the justices' order. The decision was that the order could not stand.

59. The next case relied on by the appellant, *The Bishop Auckland Local Board v The Bishop Auckland Iron and Steel Company Ltd* (1882) 10 QBD 138, concerned a complaint under the 1875 Act against the Iron company in respect of an accumulation or deposit of cinders, ashes and refuse which was a nuisance or injurious to health, which was alleged to be caused by the act and default of the company. The only question stated for the court was whether it was necessary for the local board to prove not only that a nuisance was caused by the accumulation but that such nuisance was injurious to the health of the inhabitants of the district. The court held that the offence within the section was committed where the accumulation emitted offensive smells which interfered with the personal comfort of persons living in the neighbourhood, but did not cause injury to health. Again, the decision does not assist.

60. *Neath Rural District Council and Williams* [1951] 1 KB 115 was a case under the 1936 Act. It concerned a watercourse. Section 259 of the 1936 Act contained specific provisions about choked or silted up watercourses being capable of constituting a statutory nuisance. There was however a proviso that there would be no liability under s. 259 on any person other than the person by whose act or default the nuisance arises or continues. On the facts a natural watercourse became silted up owing to natural causes for which the landowners were not responsible, and caused a nuisance by flooding. An abatement notice was served on them under the 1936 Act. The Divisional

Court held that the defendant landowners were not responsible for the nuisance since their failure to act did not fall within the proviso to s. 259. The court emphasised that the proviso did not contain the word "sufferance". Lord Goddard CJ described the difference in wording as "very important in this case, because it is quite clear, taking ss. 93 and 259 together, that, whereas in the case of the statutory nuisances referred to in s. 92, the local authority can proceed against a person who has suffered a nuisance to continue, in the case of a nuisance due to a choked watercourse, under s. 259 there is no liability on any person unless the nuisance arises or continues from his act or default."

61. This decision tells firmly against the appellant's submission on the present appeal. It demonstrates that the question of a person's responsibility for statutory nuisances is controlled entirely by the relevant statutory wording, and nowhere else. In the EPA the relevant test is in the definition of "person responsible" in s. 79(7).

62. *R v Walden Jones* [1936] Crim LR 839 concerned an abatement notice against someone who owned a large number of cats. It does not throw any helpful light on the present appeal.

63. *R v Metropolitan Stipendiary Magistrate, ex parte London Waste Regulation Authority; Berkshire County Council v Scott* [1993] 3 All ER 113 ("*LWRA*") concerned the Control of Pollution Act 1974. The wording and purposes of that statute are quite different from those in the EPA and there was, unsurprisingly, no discussion of the EPA or the cases decided under it or its predecessors.

64. The final case relied on by the appellant was *Shelley*. In that case South West Water owned two outfalls close to the Cornish coastal village of Porthtowan. The effects of the outfalls on the beach were monitored. Residents and other users of the beach complained about sewage deposits, including condoms and sanitary towels. They asked the local authority to act under Part III of the EPA. The relevant body of the local authority resolved to take no further action. The applicants sought judicial review of the resolution, arguing that the local authority had failed to carry out a proper determination. Carnwath J held that the local authority had not carried out a proper determination of the complaint and had merely resolved to take no further action. The local authority had therefore failed to discharge its duties under the Act.

65. The appellant submitted that the court in *Shelley* implicitly found that the outfalls were purposely released and that this was part of its conclusion that the deposits on the beach were capable of falling within s. 79(1)(e). I am unable to detect any such reasoning in the report. There was some discussion at p. 278 about the terms "deposit" and "accumulation". Carnwath J said that the *LWRA* case was about a very different context and that it did not assist (a view with which I agree). He also said that it was not in issue that the materials brought to the beach via the sea may, in principle, amount to a deposit or accumulation within s. 79(1)(e). There was nothing in that discussion to support the appellant's argument that the concepts of deposit or accumulation are limited by the state of mind of the person who has caused them to be there. Later, on p. 278, Carnwath J treated the question of responsibility for the deposits separately from the issue whether the material was a deposit at all. That supports the two stage process required by ss. 79 and 80 of the EPA.

66. I would dismiss this ground of appeal and, as already explained, the appellant did not seek to contend that the appeal could be justified on the other grounds if the first failed.

Disposal

67. I would dismiss the appeal. The consequence is that the declaration made by the Judge will stand.

68. I should finally comment on the appellant's submission that the Judge's decision will have profound consequences for cat owners and local authorities. I would reiterate the comments made by the Judge and set out in [35] above. The outcome of the Judge's declaration is that the complaint must be redetermined in accordance with the correct principles. Nothing in this judgment should be taken as expressing a view one way or the other on the outcome of the redetermination. It emphatically does not decide that the cat fouling about which the respondent has complained constitutes a statutory nuisance.

Lord Justice Nugee:

69. I agree.

Lord Justice Males:

70. I also agree with the judgment of Lord Justice Miles. The appeal must therefore be dismissed on the narrow basis that section 79(1)(e) of the EPA does not require that an accumulation or deposit within the meaning of the section is the result of a purposeful or wilful act.