



Appeal Decision

by **B S Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/N2535/C/22/3304086

16 Britannia Terrace, GAINSBOROUGH, DN21 1BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Christopher Smith personal injury trust against an enforcement notice issued by West Lindsey District Council.
 - The notice, numbered 362777, was issued on 23 June 2022.
 - The breach of planning control as alleged in the notice is unauthorised alterations to outbuilding increase in size, erection of external steps to a veranda and added window on a side elevation into neighbouring property.
 - The requirements of the notice are: 1. Removal of the veranda by demolishing the parapet walls, the timber balcony and the external stairs leading to the roof of the outbuilding; 2. Removal of the window on the side elevation of the outbuilding and brick the area left open with the appropriate materials i.e. matching brick and mortar to the existing.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(e) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by replacing "29th July 2022" in the box in part 7 of the notice with "23 June 2022". Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

2. The parties were informed of my view that, as the appeal is made on ground (e) only, there was no need for a site visit in this case. They were given the opportunity to comment on this procedure but neither main party has raised an objection.
3. The Council has alerted me to the fact that there is a typographical error in the notice, in that the date of issue is shown as 29th July 2022, the same date on which the notice is stated to take effect. However, the accompanying letter attached to the copy of the notice is dated 23rd June 2022 and the evidence demonstrates that this was the date of service. This appears to me a simple clerical error which has not prejudiced the ability of any relevant person to lodge an appeal. Any such person would have had the same period in which to lodge an appeal, i.e. by 29th July when the notice was stated to take effect, had the clerical error not been made. On this basis, there has been no injustice and I am able therefore to correct the notice.

The appeal on ground (e)

4. This ground is that copies of the notice were not served as required by S.172(2) of the Act, which provides that a copy of the notice shall be served on

the owner and occupier of the land to which it relates, and any other person having an interest in the land.

5. The appellant states that he is the occupier of the appeal property, no.16, Britannia Terrace, but indicates that he does not own it. He states that it is held in trust by the Christopher Smith Personal Injury Trust, which appears to date from 2006. The submitted documents indicate that, from 2012, the trustees are now Christopher David Smith and Pancrazia Fish.
6. The Council states that, prior to the issuing the enforcement notice, it obtained a copy of the title deed from the Land Registry on 27 May 2022, which indicated that the owners were Christopher David Smith and Pancrazia Fish. The Council duly served copies of the enforcement notice on these two individuals on 24 June 2022 by post, at the addresses listed in the title deed, 24 Newport, Barton-Upon-Humber and 17 Yarborough Court, Barton-Upon-Humber respectively; proof of delivery is provided.
7. In addition, a copy of the notice was also served on the occupier of the appeal property; a copy of the certificate of service is provided.
8. The service of the copies of the notice appears to me to accord with the provisions of S.329 of The Act, which sets out the ways in which a notice may properly be served.
9. The appellant points out that neither he nor Pancrazia Fish now live at the addresses listed in the title deed. However, it was held in *Newham*¹ that use of a Land Registry address amounts to proper service if an LPA has not been given another. It is not incumbent upon the Local Planning Authority to have to check the records of other Council departments.
10. Whilst it would have been good practice for the Council to have issued a Planning Contravention Notice in order to clarify who the relevant owners, occupiers and persons with an interest are, it appears that the Council has followed the requirements of The Act.
11. Notwithstanding the above conclusion, S.176(5) of The Act provides that, even if a person required to be served with a copy of the notice was not served, this may be disregarded if neither the appellant nor that person has been substantially prejudiced. The appeal form states under appellant details: Name: "*Mr Christopher David Smith*", Company/Group Name: "*Christopher smith personal injury trust.*" Therefore, both the occupier and the trust of which he is a trustee have lodged a valid appeal within the prescribed period and I fail to see how there was any substantial prejudice to a relevant person or body.
12. The appellant was reminded early in the appeal process by the Planning Inspectorate of the additional grounds, besides ground (e), on which he could base his appeal but appears to have decided not to widen its scope. Accordingly, there is no appeal on ground (a) such that I am able to consider the planning merits of the case. For the reasons given above, I conclude that the appeal should not succeed and I shall uphold the enforcement notice

B.S. Rogers Inspector

¹ Newham LBC v Miah [2016] EWHC 1043 (Admin)