



Appeal Decision

Site visit made on 5 September 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 3 November 2023

Appeal Ref: APP/Q9495/C/22/3310548

**Land to the north of the Boat House, Bank Ground Farm, Coniston
LA21 8AA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr K Batty against an enforcement notice issued by Lake District National Park Authority (the Authority).
- The enforcement notice was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is, without planning permission, operational development comprising the formation of two retaining stone walls, backfilling land creating a raised platform comprising of an area of hardstanding and lawned area, erection of four associated facility buildings and the associated making of a material change of use of the lake and lakeshore to a tented camping and caravan site.
- The requirements of the notice are:
 1. Permanently discontinue the use of the Land as a tented camping and caravanning site.
 2. Remove from the Land the four timber buildings as shown on the attached photograph below (appendix 1).
 3. Remove in their entirety from the Land the two retaining stone walls (one on the lakeshore and one on the field banking) and the infill material used to form the raised platform between the two retaining stone walls.
 4. Reinstate the Land to its former levels and condition before the works to site the timber buildings and to create the retaining walls and raised platform took place; as illustrated on Google Earth image dated 30 June 2018 (appendix 2) and Goggle [sic] Street View image dated April 2018 (appendix 3).
- The period for compliance with the requirements is: 1 month for requirement 1 and 12 months for requirements 2-4.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (b), (c), (d), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal on ground (e)

1. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by S172 of the Act. S172(2) of the Act states that a copy of an enforcement notice shall be served – (a) on the owners and on the occupier of the land to which it relates: and (b), on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
2. The enforcement notice was served on Mr K J Batty, the appellant, and the Trustees of the Rawdon-Smith Trust. The appellant submits that his son,

Mr J Batty, whilst not a legal owner of the Land, is the joint owner of the farm and related business which occupies it. It is said, therefore, that Mr J Batty has an interest in the Land which is materially affected by the notice, and thus should have been served with a copy of it.

3. The Authority issued a Planning Contravention Notice (PCN) on 17 May 2022 and served it on Mr J Batty. In his response, he indicated that he had an interest in the Land as a "partner" and gave his address as Bank Ground Farm. I note that Mr J Batty is not a legal owner of the Land to which the notice relates. However, the Authority does not dispute that Mr J Batty is a partner in the farm as well as the business which occupies the Land. A person may occupy land without having a legal interest in it. In addition, the Authority considered Mr J Batty had sufficient interest in the Land to serve him with a PCN, which he confirmed. It thus seems to me that the Authority must have been aware Mr J Batty had an interest in the Land at the time it issued the notice.
4. I therefore find that Mr J Batty is an occupier of the Land, or indeed a person who has an interest in the Land which is materially affected by the notice. On that basis, in accordance with S172 of the Act, Mr J Batty should have been served with a copy of the enforcement notice.
5. S176(5) of the Act states that, where it would otherwise be a ground for determining an appeal under S174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him. Thus, the failure to serve a notice in accordance with S172 does not automatically result in success on ground (e). It is necessary to establish whether Mr J Batty and the appellant were substantially prejudiced by the failure to serve him with a copy of the notice.
6. The Authority says that Mr J Batty was aware it intended to issue an enforcement notice, pointing to an email exchange from July 2022 onwards between the two. However, a broad awareness of an intention to issue a notice at some undefined point in the future is not the same as the statutory requirement under S172 to serve those with an interest in the Land with a copy of an actual notice.
7. Indeed, in the Authority's email of 27 July 2022, the officer stated that, "I am unable to provide you with a timescale as to when such notices will be issued and the timescales that will be provided to undertake any required measures specified in the notices." Therefore, the email exchange assists little in supporting the proposition that Mr J Batty was aware of the enforcement notice when it was actually issued in September 2022. Moreover, there is no evidence that the Authority realised it had failed to serve the notice on Mr J Batty and made any subsequent attempts to inform him.
8. The Authority points to the family and business relationship between Mr J Batty and the appellant. It is a matter of fact that Mr J Batty is the appellant's son and business partner. However, it cannot be simply assumed that a family or business link provides sufficient scope for a person to have been suitably notified of an enforcement notice by which they are materially affected. To my mind, reliance on such assumption is not sufficient to discharge the statutory burden of S172.

9. The Authority also points to the fact that Mr J Batty gave his address in the PCN response as Bank Ground Farm, the same address that the appellant's notice was served on. However, the appellant states that Mr J Batty does not live at Bank Ground Farm. In any event, the notice would not have been addressed to Mr J Batty and it cannot therefore be presumed that, even if he did live there, that he would have been aware of its service. As the appellant points out, it is possible such correspondence would not be passed between the two.
10. The fact that Mr J Batty has not appealed against the notice lends weight to the case that he has been prejudiced by the failure to serve a copy of the notice on him. The first evidence to this appeal that Mr J Batty was aware of the enforcement notice was in the appellant's final comments dated February 2023. It is stated therein that Mr J Batty was now aware of the appeal but was not immediately aware of the notice. At this point, he would have been unable to make an appeal of his own, or make substantive written contributions to this appeal as it post-dated the 9 January 2023 deadline for interested persons to make submissions. Indeed, I note that Mr J Batty was not a recipient of the Authority's notification of the appeal. Likewise, he attended my site visit in September 2023, which again would have been too late to make written submissions to this appeal.
11. As a result, I find that the Authority failed to serve Mr J Batty with a copy of the enforcement notice in accordance with S172 of the Act and such failure resulted in substantial prejudice to both him and the appellant. For the reasons set out above, I am unable to exercise the power to disregard the non-service in accordance with S176(5) of the Act.
12. The appeal on ground (e) therefore succeeds.
13. In these circumstances, the appeals on the grounds set out in S174(2)(b), (c), (d), (a) and (f) of the Act and the application for planning permission deemed to have been made under S177(5) of the Act do not fall to be considered.

Formal Decision

14. The appeal is allowed, and the enforcement notice is quashed.

J Whitfield

INSPECTOR