

## Toni & Guy Win Appeal Against a Visual Amenity Notice

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Toni & Guy have successfully appealed by way of case stated against a decision that the respondent local authority had correctly served a notice concerning remedial work to be carried out, under section 215 of the Town and Country Planning Act 1990.

Toni & Guy were the tenants of the ground floor of a four-floor building. The local authority served a notice under section 215 on the occupiers of all floors stating that work was to be done on the first, second and third floors. The notice specified that it related to the whole building. Toni & Guy responded that the notice should not apply to them and appealed on the ground that the notice requirements exceeded what was necessary. The Magistrates' Court held that the notice had been correctly served.

The question to be determined on appeal was whether the Magistrates' Court had been wrong to hold that the local authority, when serving notice under section 215 on the occupiers of the first, second and third floors, requiring works to be done to those levels, had been required to also serve the notice on Toni & Guy as the occupiers of the ground floor, thereby requiring them to also carry out those works although they had not at any time owned, occupied or otherwise had any rights of access to any part of the first, second and third floors. Toni & Guy submitted that the local authority had misdirected itself in law and therefore acted ultra vires by serving the notice on the occupier of the ground floor even though they were neither the owner nor occupier of the property where the work had been required.

The appeal was allowed with the Court confirming that a local planning authority may identify an area of land within its administrative area as one which was impacting adversely upon amenity. Having done so, it may, if it thought it appropriate, serve a notice under section 215. The notice had to identify the land which was impacting adversely upon amenity and it had to be served upon the owners and occupiers of that land.

However the local authority should have identified the land to which the notice under s.215 related as the first, second and third floors of the building. Had it done so, there would have been no question of it being required to serve a notice under section 215 on an occupier of a different part of the building. By specifying that the notice related to the whole of the building, the local authority had acted outside its statutory power. It did not have a power to serve a notice in respect of the ground floor of the building since that floor was not in such a condition so as to cause harm to amenity. There was no purpose in serving a notice upon persons who had no ownership or occupation rights. The notice was therefore quashed.

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