



Neutral Citation Number: [2024] EWHC 238 (Admin)

Case No: CO/1091/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/02/2024

Before :

Karen Ridge sitting as a Deputy High Court Judge

Between :

MR DREWEY AMBROSE PRICE

Claimants

-and-

MR JAMES MATTHEW BALL

- and -

SOUTH CAMBRIDGSHIRE DISTRICT COUNCIL

Defendant

Michael Rudd (instructed by **Fulchers solicitors**) for the **Claimants**
Emmaline Lambert (instructed by **Ivy Legal**) for the **Defendant**

Hearing dates: 14 November 2023

Approved Judgment

This judgment was handed down remotely at 14:00 on 9 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Deputy High Court Judge Karen Ridge:

1. This is the Claimants' renewed application for permission to challenge two actions of the Defendant, South Cambridgeshire District Council, the Council. The first challenge is an alleged failure of service of an Enforcement Notice (the Notice) issued under section 172 of the Town and Country Planning Act 1990 on 23 December 2022. The second challenge is regarding the refusal of the Defendant Council, communicated by email dated 16 February 2023, to withdraw the Enforcement Notice.

BACKGROUND

2. The Notice relates to land known as "...land to the east of Chear Fen Boat Club, Twentypence Road, Cottenham, Cambridgeshire, CB6 8PX..." ("the Land") which is in use as a caravan site comprising several, individually numbered plots. The Claimants are the registered owners of the Land. Both Claimants reside on the Land, the First Claimant on Plot 8 and the Second on Plot 5. The Defendant is the local planning authority, the Land being in its administrative area.
3. There is a relatively lengthy planning history regarding the Land, starting in June 2021, when the Council served a first enforcement notice on the Claimants. That notice was appealed, and it was subsequently withdrawn by the Council. It was followed by two applications by the Claimants to the Council. The first of these was for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) on 29 March 2022 and a further application was made for planning permission on 8 April 2022. Both applications were refused by the Council.
4. On 9 September 2022 the Council served a second enforcement notice in relation to the creation of 9 pitches on the Land. An appeal was submitted against that notice and against the earlier refusal of planning permission for the same development. That second enforcement notice was subsequently withdrawn.
5. Following this series of attempts to serve a lawful enforcement notice pursuant to section 174 of the 1990 Act, the Council issued a third enforcement notice on 23 December 2023. It is this notice which is the subject of the challenge.
6. The Claimants assert that the Notice did not come to their attention until 9 February 2023 when their planning consultant, sought confirmation as to whether a further enforcement notice was to be issued, following withdrawal of an earlier notice. The consultant was provided with a copy of the Notice that was purportedly issued and served on 23 December 2022.
7. The Claimants contend that the planning agent was pursuing confirmation of the Council's position in relation to two outstanding statutory appeals to the Secretary of State relating to refused planning applications. In addition, the September 2022 notice had also been subject to appeal, until it was withdrawn by the Council. The Claimants say that they were keen to ensure that any further

enforcement notice was also appealed and conjoined with the outstanding planning appeals.

8. On the 9 February 2023 the Claimants' planning agent spoke with Mr Neil Langley of the Defendant Council and requested that the Notice be withdrawn and reissued, with lawful and adequate service. This would have the effect of providing the Claimants with the ability to exercise their statutory right of appeal. The Claimants contend that they had been deprived of the opportunity to appeal by inadequate service.
9. On 16 February 2023 the Defendant communicated the decision to refuse to withdraw the Notice ("the Decision"), confirming in an email that "...I can confirm the Council has resolved not to withdraw and re-issue the enforcement notice on your clients and all interested parties..." and that "...the council is prepared to issue a Letter of Assurance under Section 172A of the Town and Country Planning Act 1990 (as amended), giving your clients some comfort that the Council will not take further enforcement action until the outcome of the appeals are known...".
10. Following pre-action protocol matters, the judicial review claim was received and issued for service on 24 March 2023. On 22 May 2023, Mr CMG Ockelton, Vice-President of the Upper Tribunal, sitting as a High Court Judge, refused permission on the papers. On 23 May 2023 the Claimants renewed their application for permission

THE CHALLENGES FOR WHICH PERMISSION IS SOUGHT

11. The Claimants seek to bring this challenge on two grounds. Firstly, that the Enforcement Notice dated 23 December 2022 was not served on them in accordance with the applicable statutory provisions, resulting in the Notice being unlawful. It is submitted that the Defendant failed to comply with the service provisions in s.329 of the 1990 Act.
12. The second challenge for which permission is sought is a challenge to the decision of the Defendant not to withdraw the Notice. The Claimants contend that this decision was irrational and procedurally unfair in all the circumstances. It is submitted that once the Defendant became aware that the Claimants had not received the Notice, despite having been under the impression that the Notice had been appealed, as expressly confirmed by the Defendant, the Defendant should have withdrawn the Notice as invited to do so by the Claimants. The decision not to do so is irrational.

THE DEFENDANT'S POSITION

13. The Defendant submits that the grounds of challenge are unarguable. Copies of the Enforcement Notice were lawfully served on both Claimants in accordance with sections 172 and 329(2)(b)(ii) of the TCPA 1990 on 23/12/2022. The Defendant asserts that any judicial review of the decision to issue and serve the Enforcement Notice must fail as the Claimants have not appealed to the

Secretary of State under s.174(2)(e) TCPA 1990 which provides an adequate alternative remedy. In so far as the claim seeks judicial review of the decision to issue and serve an Enforcement Notice on 23/12/2022, the claim is out of time (having not been filed within the 6-week deadline in CPR 54.5(6)) and it is the Defendant's contention that the refusal to withdraw the Enforcement Notice was not irrational or procedurally unfair.

THE LAW

14. The power to issue an enforcement notice is to be found at section 172 of the 1990 Act which provides in so far as is material:

“172.—Issue of enforcement notice.

(1) The local planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) A copy of an enforcement notice shall be served—

- (a) on the owner 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.”

15. The provisions for service of such notices are to be found at section 329 of the 1990 Act, which provides, in so far as is relevant:

“329.— Service of notices.

(1) Any notice or other document required or authorised to be served or given under this Act may be served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address;...

(2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or

authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—

(a) it is addressed to him either by name or by the description of “the owner” or, as the case may be, “the occupier” of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or

(b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and—

(i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or

(ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises”

16. There is another issue which arises as a result of the enforcement notices not coming to the attention of the Claimants and that is the timing of this application for judicial review. The claim for judicial review was made on 21 March 2023. CPR 54.5(5) requires a judicial review relating to matters under the Planning Acts to be brought not later than 6 weeks after the grounds to make a claim first arose. The Claimants contend that the grounds only arose when they became aware of the Notice on the 8 February 2023.
17. The Defendant confirms that on the 23 December 2022 19 Notices were attached to the entrance gate (see WS of Neil Langley at §10 [CB/308][CB/340]), which is at the end of “...a long private track...”. None of the Notices were served on the individually occupied plots, nor was any attempt made to do so. Further, it would appear from the exhibited photographs that the 19 individual notices were packaged into only 3 plastic wallets.
18. In the telephone call between the Claimant’s agent and a Council Officer on 8 February 2023, the Council Officer confirmed that the Notices had been issued on 23 December 2022 and that the Council was under the impression that an appeal had been lodged in relation to the Notice. The next day the planning agent, Mr Green, confirmed that the Notice had not been served on the Claimants and asked the Council to withdraw it and re-serve it. This would have enabled the Claimants to exercise their statutory rights of appeal.
19. On 16 February 2023 the Council confirmed its decision not to withdraw the Notice, stating that it was prepared to issue a Letter of Assurance promising not to take enforcement action until the outcome of the appeals was known. That did not however, reinstate the statutory rights of appeal of the Claimants who were out of time.

DISCUSSION

20. Ground 1: is arguable. The Council was seeking to serve an enforcement notice on 19 separate occupiers. Each of the occupiers own separate plots of land and each plot has its own distinct address. The Notice lists the persons served. The

persons purportedly served were two individuals (Shane Tidd and Joseph Tidd) at an address other than the Land; the owners and individuals of the 9 plots, being 16 named individuals identified by reference to separate plots and three notices at specific plots addressed to “the owner/occupier”. A further copy of the Notice was affixed to the Land.

21. In the case of the Claimants, their address was known to the Council and in those circumstances section 329(1) sets out the acceptable means of service, which includes leaving it at the usual or last know place of abode or, where an address for service has been given, at that address. Section 329(2) provides that....”where the notice is required to be served on any person....it shall be taken to be duly served where...it is so addressed and is marked in such a manner as may be prescribed of securing that it is plainly identifiable as a communication of importance, and...it is...affixed conspicuously to some object on those premises”.
22. In this case 19 copies of the Notice were placed in three envelopes and attached to a gate. The envelopes were affixed to the general access gate, together with one further copy of the Notice. It is arguable that this does not constitute adequate or lawful service pursuant to the provisions of s.329.
23. Ground 2: is arguable. The Claimants had a lengthy history of engaging with the planning process, they had instructed an agent. It was highly likely that they would have appealed the enforcement notice if it had come to their attention. Once the Council were informed that the Claimants had not received the Notice it is arguable that the rationale course of action would have been to withdraw the Notice and re-serve it. The Council’s Letter of Assurance only gave assurance that no enforcement action would be taken pending the outcome of the planning appeals which would be limited to consideration as to whether planning permission should have been given for the breach of planning control. The Claimants were still deprived of their statutory appeal rights under s174(2)(b), (c) and (d) which could have resulted in the Notice being quashed or their appeal rights under s174(2)(f) in relation to the requirements for compliance.
24. Other Matters: I have not found it necessary to come to a view on the timing of the application. Ground 1 is predicated on the failure to adequately serve the notice and this matter only came to the attention of the Claimants on 8 February 2023. If the Claimants succeed on this ground, then arguments about the timing of the challenge can be raised at the substantive hearing.
25. The parties are invited to submit a draft order setting out case management directions for my approval.

END