

What you can't access you can't repair

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In a recent case taken by Hammersmith & Fulham Borough Council against a branch of Toni & Guy, the local authority was concerned that the dilapidated state of part of a building was impairing the visual amenity of the area. It served a notice on the occupiers requiring them to repair the elevations of the upper floors of the building. The council served notice on Toni & Guy, who occupied the ground floor and basement (which were not in disrepair) as well as the tenants of the upper floors (which were dilapidated) and the freeholder.

The council accepted that the ground floor and basement tenants had no control over the condition of the upper floors but refused to withdraw the enforcement notices issued against them, so the matter went to Court.

The Court ruled that when giving a notice, the land in respect of which the owner and occupier might be served with a notice must be the same as the land in relation to which remedial works were needed and that the notice could only relate to the part of the property which was having an adverse impact on the amenity of the area. Toni & Guy did not occupy the relevant part of the property. The notices served on them were therefore quashed.

Dinesh Raja, Managing Partner comments: “In this case, the tenants could not have rectified the dilapidations even if they had wanted to, as the upper floors of the building were not within their control. Fortunately for them, the Court saw sense. Landlords should be careful when serving, for example, schedules of dilapidations to ensure that the tenant can comply with the schedule from within their demise.”