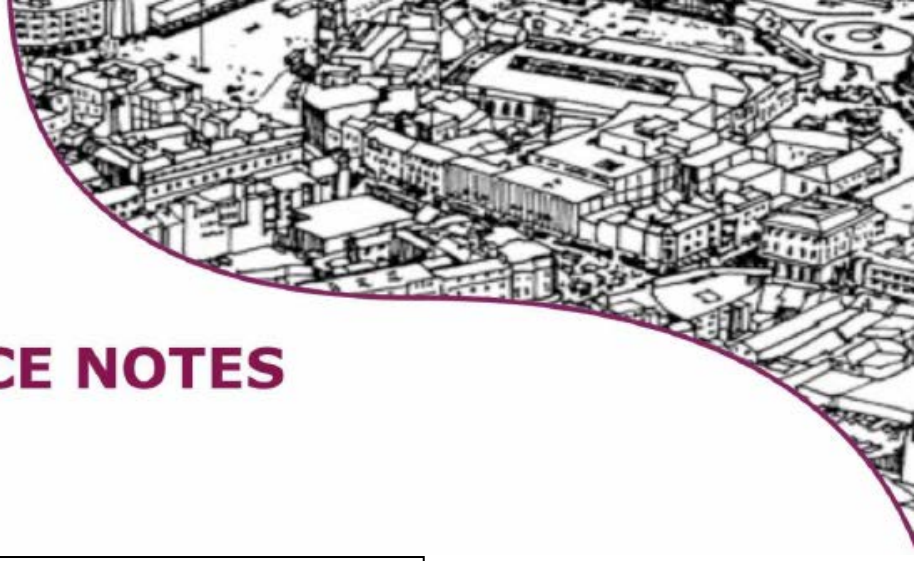

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# IHBC GUIDANCE NOTES

## The 'Stripey House' and the Implications for the use of S.215 Notices

*GN2017/3*
*July 2017*

*This is one of a series of occasional IHBC Guidance Notes published by the Institute of Historic Building Conservation (IHBC). IHBC Guidance Notes offer advice on topics that we consider crucial to the promotion of good built and historic environment conservation policy and practice.*

*The IHBC welcomes feedback, comment and updates on our Guidance Notes to our consultant editor Bob Kindred, at research@ihbc.org.uk*

### Executive Summary

1. This short guidance note is intended to clarify the use of S.215 Notices (re Land Adversely Affecting Amenity of Neighbourhood) with regard to the external decoration of buildings.

2. It follows the recent decision of the High Court to allow the candy-colored stripes to be retained on an unlisted house in a Kensington conservation area: the 'Stripey House'. [1]

3. This case has received widespread publicity, the details of which need not be dwelt on in great detail in this note, suffice it to say that the decision of the Royal Borough of Kensington & Chelsea to serve a S.215 Notice on Mrs Zipporah Lisle-Mainwaring, the owner of the property, was upheld in the magistrates' court (under S.217) and then appealed in the Crown Court where it was further dismissed in July 2016. It was this decision that was the subject of the recent further successful appeal by the owner to the High Court.

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## The Origins of S.215

4. S.215 goes back to the 1947 Act and has been an invaluable remedy to local authorities to tidy up 'any garden, vacant site, or other open land' where amenity would be adversely affected. In time this provision came to be used to deal with the deleterious amenity of neglected buildings. To that end the Department of Communities and Local Government published some excellent Best Practice Guidance in 2005. [2]

## Recent judgements and how they differed

5. In the recent case the judge in the Crown Court had been persuaded that as the house was in a conservation area, painting it in red-and-white vertical stripes was unsightly. The owner then argued in the High Court that the remedy should only address disrepair adversely affecting amenity and that mere act of re-painting did not affect "the condition of land" under S.215.

6. The judge in the Crown Court had decided that the "condition of land" related to its current state and works could go beyond mere maintenance. The crucial points to emerge from the High Court however, are that the statutory interpretation of S.215 is not referable to, or affected by, whether or not a building falls within a conservation area. Furthermore, the courts are not the appropriate forum to determine the interpretation or application of heritage policies or the reasons for designating a conservation area, notwithstanding that the existence of that designation might be a relevant factor as to whether a S.215 Notice might be served.

7. The High Court concluded that careful consideration was required to ensure the limits of the Act were not exceeded. It concluded that questions of aesthetics or taste did not fall within the Act (including an owner's choice of exterior finish). Furthermore it also rejected the argument relied on in the Crown Court that the local planning authority had the right to use S.215 to control a choice of re-decoration that it judged to have an adverse impact on the neighbourhood.

8. Another interesting issue to emerge in the High Court was the status (and relevance or otherwise) of the heading or side note in the Act relating to S.215. The heading of this Part of the 1990 Act [3] reads: "Land adversely affecting amenity of neighbourhood", and the heading to section 215 itself reads: "Power to require proper maintenance of land".

9. In issuing definitive guidance on the use of such wording the House of Lords concluded that while these are a component part of a Bill, the headings and side notes are there for ease of reference and carry less weight than those parts considered and debated on in Parliament. [4] While they should not be disregarded completely they are principally for guidance, providing the context for examination of those parts of a Bill that are open for debate.

10. The High Court concluded that it could not be doubted that the phrase “proper maintenance of land” (including the fabric of a building) is directed to its maintenance but in this case the owner could not be criticised for maintaining the building albeit in a chosen colour scheme that was repellent to the local authority and nearby residents. This was a matter of aesthetics.

11. Parliament had not sought to prevent landowners, including those in conservation areas, from painting their houses in the colours of their choice unless an Article 4 Direction is in place. Use of a S.215 Notice was therefore considered by the High Court to fall outside the intention and spirit of the Act by addressing a matter other than disrepair or dilapidation and a restriction of permitted development rights would have addressed this more appropriately.

12. As there was no suggestion that maintenance or repair of the building was deficient, the High Court concluded that a requirement to alter a lawful painting scheme was an improper use of S.215. Consequently the Notice and the decision of the Crown Court were quashed.

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**Endnotes**

1. See relevant results at http://ihbconline.co.uk/newsachive/?s=stripes. With regard to listed buildings, the established principle that painting that alters the character and appearance is likely to require consent was set in Windsor & Maidenhead RBC v. Secretary of State [1984], translated into Circular 8/97 and then PPG15 para. 3.2 et seq.

2. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf

3. Planning Act 1990 Part VIII Chapter II

4. R v Montila [2004] UKHL 50