



Review of Planning Enforcement changes over the past 5 years

Proceeds of Crime Act 2002

“ The legislation is intended to deprive defendants of the benefit they have gained from relevant criminal conduct, whether or not they have retained such benefit, within the limits of their available means.”

➤ *House of Lords in R v May, Jennings v CPS and R v Green (2008)*

- Majority of cases involve offences of theft, dishonesty, drug dealing.
- Planning Enforcement – underused, but increasingly better utilised.
- Key advantages – profits forfeited and LPA receives portion of proceeds

Proceeds of Crime Act 2002

Selected planning offences relevant for POCA

- Town and Country Planning Act 1990
 - ◉ S179 - failure to comply with an enforcement notice
 - ◉ S194 - false or misleading statements on CLUED application
 - ◉ S210 - non-compliance with TPO
 - ◉ S224 - non-compliance with Town and Country Planning Control of Advertisement - (England) Regulations 2007
- Planning (Listed Buildings and Conservation Areas) Act 1990
 - ◉ S9 - Carrying out works to a listed building without consent
 - ◉ S43(1) - non-compliance with Listed Buildings Enforcement Notice

Proceeds of Crime Act 2002

- Consider restraint as soon as criminal investigation is initiated
- Conviction
- Ask Crown Court to proceed with confiscation order – Section 6 POCA:
- The Crown Court must proceed under this section if the following two conditions are satisfied
 1. He is convicted of an offence or offences in proceeding before the Crown court; or is committed to the Crown Court for sentence
AND
 2. The Prosecutor asks the court to proceed under this section, the court believes that it is appropriate to do so.

Proceeds of Crime Act 2002

Confiscation orders obtained in 2013

- South Bucks DC obtained an order for £33k for unlawful operation of a car park in the Green belt
- Ealing council obtained a £11k order for illegal use of an outhouse building as rental property
- Barnet Council obtained a £75k order for converting 2 houses into flats
- Haringey Council obtained an order for £310k - landlord convicted of unauthorised changes of use of single residential dwellings

Proceeds of Crime Act 2002

Confiscation orders obtained in 2014

- Waltham Forest Council obtained an order for £217k and 73k fine for illegal use of a number of properties as flats.
- Lambeth Council secured a £143,135 confiscation order against a property developer who rented out a property as flats in breach of enforcement notices
- Hillingdon Council obtained an order for 170k following a landlords failure to comply with enforcement notices relating to use of two properties as a hotel.
- Kirklees Council secured a £223,390 order against a land owner who sold cars from a site in breach of an enforcement notice.

Deliberately Concealed Breaches

- *Connor* principle as confirmed by *Welwyn Hatfield Council v SSCLG* [2010] EWCA Civ 26 and *R. (Fidler) v SSCLG* [2011] EWCA Civ 1159.
- The immunity periods under s171B do not apply if:-
 - (1) there is positive deception in the planning process;
 - (2) the deception is intended to undermine the planning process;
 - (3) the deception does undermine the planning process; and
 - (4) the developer stands to profit directly from the deception.

Deliberately Concealed Breaches

- *Welwyn Hatfield Council v SSCLG* [2010] EWCA Civ 26 (Beasley Case)



Deliberately Concealed Breaches

- Mr Beesley had deliberately set out to deceive the local planning authority by obtaining planning permission for an agricultural building, intending all along to erect a house. He purported to implement the planning permission, and what he built looked outwardly similar to the agricultural building for which planning permission had been granted, but it was designed and equipped as a house.
- Mr Beesley and his family then occupied the house for four years, following which an application was then made for a lawful development certificate.
- This was refused by the local planning authority on the grounds of Mr Beesley's fraudulent conduct, but granted by an Inspector on appeal.
- A challenge to that decision by the Council in the High Court succeeded, but the Court of Appeal reversed this decision.
- However, the Supreme Court finally sided with the Council, deciding that Mr Beesley's deliberate deceit prevented him from benefiting from his wrongdoing.

Deliberately Concealed Breaches

- *R. (Fidler) v SSCLG* [2011] EWCA Civ 1159



Deliberately Concealed Breaches

- Mr Fidler built his house behind straw bales in 2002 and lived within it until 2006, he then removed all the straw bales to reveal the hidden house.
- On discovery of the house in February 2007, the Council issued a number of enforcement notices requiring that the dwelling be demolished.
- Mr Fidler unsuccessfully appealed these notices and referred the matter to the High Court. The High Court dismissed his case confirming that as “substantial completion” had not occurred until the straw bales were removed, the 4 year time-limit on enforcement did not commence until then. The Council was therefore entitled to take enforcement action and issue the notices.
- Mr Fidler appealed to the Court of Appeal. Around the same time the Supreme Court held, in the *Beesley case*, that those who deliberately conceal what they are doing should not be protected from enforcement action. In light of this decision, the Court of Appeal rejected Mr Fidler’s appeal.
- In June 2014 Reigate & Banstead successfully apply for an injunction requiring a landowner to comply with enforcement notices and demolish a house, put on hold pending determination of appeal following application to retain the house as an agricultural dwelling
- A Planning Inspector allows the retention of the house for a period of 3 years. This decision was however recovered by Eric Pickles and refused in March 2015.

Deliberately Concealed Breaches

The End....???

Surrey farmer accepts castle must be demolished

16 April 2015 | Surrey



Robert Fidler built the house in 2002 and hid it behind hay bales for four years

Localism Act

New planning enforcement related powers introduced into the Town & Country Planning Act include:-

Retrospective planning permission

- A local planning authority (LPA) can now decline to determine an application (section 73c) for retrospective planning permission submitted after an enforcement notice has been issued for any part of the development covered by the retrospective application.
- Ground (a) of an enforcement appeal – that planning permission ought to be granted is no longer available if a planning application for the same development has been made but has not yet been determined.

Localism Act

Concealed breaches

- Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates' Court for a planning enforcement order (PEO) (section 171BA).
- Where a PEO is granted, the LPA will have will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred.
- The 4 year and 10 year periods for immunity will not apply in cases of concealed development.
- An application for a PEO must be made within 6 months of the LPA becoming aware of the breach.
- A Magistrates' Court may only make a PEO if it is satisfied that the breach has been deliberately concealed.
- If LPA has evidence of deliberate concealment, is a PEO actually required? *

Localism Act

Prosecutions

- Where the LPA is required to serve enforcement notices on someone against whom it does not intend to take action (e.g. a landowner where a tenant is in breach), it may now serve a letter stating that it does not intend to take action against that person or in respect only of certain of the matters specified in the enforcement notice. Such assurance may also be withdrawn by letter.
- The maximum fine if found guilty of a breach of condition notice has been increased to £2,500.
- An LPA now has six months from when it first discovered a contravention of a TPO or advertisement regulations to issue prosecution proceedings provided that the offence was not committed more than 3 years before.

Localism Act

Advertisements

- An LPA may now remove structures used to display advertisements following the service of a removal notice. It may also recover the costs of removal from the landowner. Appeal of removal notice s225A to Magistrates Court.
- An LPA may take action against the persistent fly-posting of structures or plant following the service of an action notice and recover the costs from the landowner.
- An LPA has the power to remove graffiti and other signs, other than advertisements, which are offensive or detrimental to the amenity of an area. Removal may be in response to a request from an owner or occupier.

National Planning Policy Framework (NPPF)

S207 of NPPF states:-

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

National Planning Practice Guidance (NPPG)

Ensuring Effective Enforcement

- [Planning enforcement – overview](#)
- [No formal action](#)
- [Retrospective planning applications](#)
- [Obtaining information about alleged breaches of planning control](#)
- [Planning contravention notice](#)
- [Enforcement notice](#)
- [Planning enforcement order](#)
- [Stop notice](#)
- [Temporary stop notice](#)
- [Breach of condition notice](#)
- [Injunction](#)
- [Rights of entry](#)
- [Enforcement on Crown land](#)
- [Listed building enforcement](#)
- [Enforcement of hazardous substances control](#)
- [Unauthorised advertisements](#)
- [Enforcement and protected trees](#)
- [Model Notices](#)

The Planning Enforcement Fund

- As of January 2015 Department for Communities and Local Government (DCLG) announces details of a £1 million fund to help councils crack down on unauthorised development.
- You are limited to one application per site.
- The maximum amount of grant you may apply for is £10,000 (or 50% of your estimated legal costs, whichever is the lesser) towards the cost of securing a Court Injunction in the High Court or County Court. Your costs estimate should set out details of anticipate legal costs likely to be incurred in preparation of issuing legal proceedings and attending Court. Non-legal specialist officer time must not be included. The local planning authority is responsible for any legal costs incurred in excess of £10,000 or in excess of any lesser sum applied for and granted.
- Funding is not available:
 - If Court proceedings have commenced; or
 - Where an appellant appeals against an enforcement notice issued by the local planning authority, within 28 days of receiving the notice, to the Secretary of State for Communities and Local Government.

The Planning Enforcement Fund

Eligibility Criteria

- The fund is solely for the use by local planning authorities, in England, towards the cost of securing a Court injunction (High or County Court), under Section 187B of the Town and Country Planning Act 1990, against actual or apprehended breaches of planning control to be restrained. Funding is only available where other enforcement options have been, or would be, ineffective, or where there have been persistent breaches of planning control over a long period.
- In order to be considered for an award of a grant, each application for funding should address the following criteria in approximately 1,000 words in total (with a final word count):-
 - Confirmation the commencement of injunction proceedings is authorised; the source of that authority (e.g. planning committee/named delegated officer) and the date obtained;
 - Confirmation your authority has taken legal advice on the proposed injunction (internal or external) from whom and on what date;
 - Demonstrate why the action is in the general interest;
 - Explain the degree and flagrancy of the breach of planning control;

The Planning Enforcement Fund

- Set out the enforcement history for the site e.g. what other measures have failed over a long period of time;
 - Explain any urgency needed to remedy the breach;
 - Set out the planning history of the site;
 - Provide details of previous planning decisions in relation to the site;
 - Set out consideration of the Public Sector Equality Duty (section 149 of the Equality Act 2010) and Human Rights Act 1998;
 - Demonstrate that an injunction is a proportionate remedy in the circumstances of the individual case.
 - Amount of funding requested, including a breakdown of estimated legal spend on legal costs in 2014-15 and 2015-16 (grant is only available for spend in these financial years). Non-legal specialist officer time must not be included in your estimate.
- Your authority's enforcement plan (in accordance with s207 of the NPPF) must have been published at least three months prior to applying.

Misc

- Temporary stop notices extended to cases of caravans used as a main residence placed without planning permission.
- GDPO 2015.



Neill.whittaker@ivylegal.co.uk

www.ivylegal.co.uk

02070405227