

**Changes to
Enforcement
Action Time
Limits**

DLP BRIEFING NOTE 61

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Changes to Enforcement Action Time Limits - The Unauthorised Erection of a Building and its Use as a Dwelling House

Introduction

This Briefing Note explains important limits to immunity from enforcement action against a breach of planning control arising from a recent Supreme Court judgement (*Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant)* [2011] UKSC 15). The case in question involved a landowner deliberately concealing development for four years, and then applying for a **certificate of lawfulness** after the enforcement period had expired.

The Supreme Court decided that the landowner was not entitled to certificate of lawfulness **because he set out to intentionally deceive the local planning authority**. It concluded that the development was not immune from enforcement action because no change of use had occurred, and that the principle of public policy – **that a person should not benefit from their wrong-doing** – will apply in planning cases.

This case is important for two reasons -

- Firstly, **it means that a local planning authority can refuse a certificate of lawfulness where there has been deceptive conduct even after the enforcement period has expired.**
- Secondly, **that submitting a certificate of lawfulness may alert the local planning authority that a breach of planning control has been concealed, potentially resulting in an enforcement notice being issued.**

Background

The relevant parts of the Town & Country Planning Act 1990 (The Act) referred to in this case relate to the time period for enforcement action (**Section 171B**) and the procedure for submitting a certificate of lawfulness (**Section 191**).

Section 171B(2) of the Act seeks to limit the time period for enforcement action involving a breach of planning control for the change of use to a dwelling house to four years; Section 171B(3) states that all other breaches of planning control are subject to a ten year time period.

Section 191 of the Act allows a person to ascertain whether an existing use is lawful by submitting an application that identifies the land and describes the use. However, Section 191(2)(a) states that a use can only be considered lawful **if no enforcement action can be taken against it**.

What this means is that, if development or a change of use takes place without the necessary permission first being obtained, the local planning authority only has a limited time within which to take enforcement action – either four or ten years. Once this time period has expired, no enforcement action can be taken and the development or change is deemed to be 'lawful'.

The Beesley Case

In 1999 Mr Beesley purchased 22 acres of land in the Green Belt near Potters Bar, in Hertfordshire, within the Welwyn Hatfield Borough Council's area. In 2001 Mr Beesley obtained planning permission for a hay barn, which included a condition that it should only be used for the storage of hay, hay straw or other agricultural products. In 2002 he constructed a building which had the external appearance of a barn with metal walls and roller shutter doors. However, internally the building was a three bedroom house, with full facilities including a garage, and was connected to mains electricity, water and drainage. In 2002 Mr Beesley and his family moved into the building and lived in it continuously for four years.

In 2006 Mr Beesley submitted an application for a certificate of lawfulness for use of the building as a dwelling under Section 191 of the Act. The Council refused the certificate because it decided that the building was not used as a dwelling and that it had ten years to take enforcement action. Mr Beesley appealed the decision. The Planning Inspector allowed the appeal on the basis that the building had been used as a dwelling for more than four years.

The Council appealed to the High Court who quashed the Inspector's decision. Mr Beesley then appealed to the Court of Appeal who allowed the appeal, but this on application to the Supreme Court was over-ruled, and denied the issue of a certificate of lawfulness. The Council's appeal to the Supreme Court was on two grounds and these formed the basis of the Court's judgement –

- First, it challenged the Court of Appeal's decision **that there had been a relevant change of use.**
- Second, the Council argued that **even if there had been such a change, the principle of public policy that no one should be allowed to profit from his own wrong, precluded Mr Beesley from relying on Section 171B(2) of the 1990 Act.**

In essence therefore, the Supreme Court found that because the building was not constructed as a barn but as a dwelling and that Mr Beesley admitted that he always intended to build a dwelling and not a barn, it was doubtful that there had been a change of use because there was no prior use. The permitted use of the building was a barn, but it had never been used for that purpose and as such neither Section 171 nor Section 191 of the Act applied in that case.

The Judgement also highlighted the wrongfulness of the applicants actions, describing Mr Beesley's as, ***“a deliberate, elaborate and sustained plan to deceive the council from first to last, initially into granting him a planning permission and then into supposing that he had lawfully implemented it and was using the building for its permitted purpose. His conduct throughout was calculated to mislead the council and to conceal his wrongdoing”***; and ***“Mr Beesley deliberately set out to conceal the true nature of the development during the whole four year period, with the aim that the council would be prevented (as happened) from taking enforcement action within the four-year period, there is no justification for cutting off the council's right to take enforcement action”***.

A similar case – Fidler v Secretary of State for Communities and Local Government and Reigate and Banstead Borough Council – is also proceeding through the Courts. This case concerns the construction, without planning permission, of a mock, tudor castle behind a 40 ft high shield of straw bales and tarpaulin. Mr Fidler, just like Mr Beesley, successfully concealed his dwelling-house from the local planning authority for four years. Mr Fidler also claimed to be immune from enforcement action.

So far, at appeal and in the High Court, it has been decided that for the building to have been substantially completed required the straw bales and tarpaulin to be removed, and that once this had been done the Council has four years from that date to take enforcement action. Mr Fidler has appealed to the Court of Appeal, but a decision has been put on hold pending the outcome of the Beesley case.

The Localism Bill

The emerging Localism Bill – currently progressing through the House of Lords – will, when enacted, seek to amend the 1990 Planning Act to deal with the enforcement issues raised in the cases referred to. The proposed amendments in the Localism Bill **will allow local planning authorities to apply to the Courts for an extension of the enforcement period where a breach of planning control has been concealed.** This means that if the local planning authority did not discover the breach until after the four or ten year period had expired, it may still be able to take action, if permitted to do so by the Courts.

Key Conclusion

This judgement will be welcomed by local planning authorities dealing with dishonesty and deception in applications for certificates of lawful use.

The Beesley and Fidler cases, whilst exceptional, do mean that development of any scale, when deliberately concealed, may not be immune from enforcement action by a local planning authority, even after the normal four or ten year period has expired. The Localism Bill when enacted, is likely introduce a mechanism that allows for the time period for enforcement action to take place to be extended.

If you have any questions about the issues raised in this briefing note, or wish to discuss enforcement matters or certificates of lawful use applications, please contact us.

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