



PLANNING ENFORCEMENT IN WALES

Llandrindod Wells

21st September 2011

CASELAW UPDATE

MORAG ELLIS QC

2-3
GRAY'S INN
SQUARE



Do Motives Matter in Planning?

SoSCLG v Welwyn Hatfield BC [2011] UKSC 15

- B deliberately deceived LPA by applying for “*hay barn*” in which he intended to live
- B applied under s.191 TCPA for LDC after 4 years, which LPA refused on basis that it was not a dwelling house since its external appearance was not that of a dwelling
- Inspector granted certificate on basis of use
- High Court overruled Inspector; building had only ever been used as dwelling
- Court of Appeal upheld Inspector; no change of use
 - Objective test, notwithstanding consequences which were for Parliament



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- Sage v SoSE followed: looked at as a whole, physical and design features were those of a dwelling and not in accordance with planning permission
 - Permitted use was agricultural storage and use as dwelling house constituted change of use under s.171B(2) and/or between completion and occupation, no use followed by change to dwelling
 - Therefore LPA could not rely on 10 year period in s.171B(3) since s.171B(2) displaced it.

Supreme Court HELD:

- S.171B TCPA only applies 4 year rule where there was a “change of use” but not where dwellinghouse was first use (“*Nil use*” concept rejected)
- Use of building does not fall to be considered on day by day basis, but over longer term, by reference to developer’s intention (cf. Impey)



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- Common law rule of not profiting from own wrong applies so Mr Beesley lost entitlement to immunity (failed to give Building Regs notice, lied on planning application form, did not register for Council tax/electoral register, gave LPA work address and lived “*low key*” existence)

Questions

- Last year's Seminar: concerns expressed about *"intention"*
- How is LPA to apply rules?
Supervening wrong intention?
Mance para 44 suggests n/a; 3rd party pressure? Evidence?
- Localism Bill *"planning enforcement orders"* the answer?



Enforceability of Conditions – This Planning Permission is dead!



Avon Estates v Welsh Ministers [2011]

EWCA 533

Issue:

- Can a condition be enforced after expiry of a temporary planning permission when period for enforcement of time limit has also expired?
- Holiday chalets/bungalows permitted for limited period of years on Ceredigion coast
- Occupancy conditions, March – October
- Bungalows agreed at inquiry to be immune

Cont'd

- Inspector granted CLEUDS for use as dwelling houses but subject to the conditions in the planning permissions, including winter restriction
- Beatson J HELD that planning permission had not expired, only the time limit for requiring restoration

Cont'd

- CA disagreed:
 - Sir David Keene regarded it as *“very unlikely that the statutory scheme allows for what can be described as a permanent condition on a temporary permission, other than the time limit itself”*
 - Contrasted express provision for aftercare conditions in mineral planning permissions
 - To construe the seasonal restriction as enduring in perpetuity would be inconsistent with the time limiting conditions
 - LPA which *“sits on its hands”* only has itself to blame

REVOCAION ORDERS/MATERIAL CONSIDERATIONS

Health and Safety Executive v Wolverhampton City Council
[2010] EWCA Civ 892

•Majority approved Ouseley J's decision in R (Usk Valley Preservation Soc) v Brecon Beacons NPA and held that obligation to pay compensation was material to decision whether to revoke planning permission: statutory scheme

•BUT safeguards:

- LPA should set out clearly *“why it is expedient for that sum not to be paid in circumstances in which modification/revocation might otherwise be inappropriate”*
- not to be based on *“vague”* financial considerations

•Pill LJ doubted whether risk of costs a material consideration

•Appeal due to be heard by Supreme Court, 2012



“EXPEDIENCY”

Broadland DC v Trott [2011] EWCA Civ 301

- Planning permission subject to landscaping condition
- Enforcement Notice against development without discharge of condition required landscaped area to be made available
- Area provided but not made available
- Injunction sought
- CA refused: HELD –
 - Fact of breach of EN not sufficient without breach of planning control

'Expediency' cont'd

Gazelle Properties Ltd v Bath and NE Somerset Council [2010]
EWHC 3127 (Admin)

- Challenge to “*expediency*” of enforcement by JR competent
- Challenger must show why JR grounds outside statutory grounds of appeal
- Lindblom J followed Wolverhampton on financial considerations
- MORAL: It's a good idea to follow your legal advice!