



ENFORCEMENT AND THE PROCEEDS OF CRIME ACT

Local Planning Authorities have powers under the Proceeds of Crime Act 2002 to confiscate any financial gains which are made as a result of a breach of planning control.

If an Enforcement Notice is served and not complied with, the notice comes into force and the offender is then open to prosecution. Non-compliance with an Enforcement Notice is a criminal offence and in the maximum punishment was a fine of £20,000. However under the Proceeds of Crime Act the punishment can potentially be much more severe, as the example below demonstrates.

There have been a number of cases in which powers under the Proceeds of Crime Act have been used to confiscate money earned through uses which are in breach of a valid Enforcement Notice.

A notable case of *R v Del Basso and Goodwin* was heard by the Court of Appeal in 2010. The case centred around a car park which had been operated without the benefit of planning permission. A limited planning permission had been granted which allowed the use of the site as a car park on match days of Bishops Stortford Football Club. However the car park was also used a 'park and ride' for Stansted airport on a permanent basis.

Enforcement Action was taken but the car park continued to operate. Mr Del Basso and Mr Goodwin were convicted of breach of the Enforcement Notice in November 2005 and were each fined £20,000. The park and ride activity continued and a further prosecution was mounted by the Council.

Confiscation proceedings were also begun under the Proceeds of Crime Act 2002. The Judge held that around £1.8 million had gone through the company from the illegal park and ride facility. Mr Del Basso was held to have £760,000 of realisable assets. Mr Goodwin was then bankrupt. A confiscation order was made against Mr Del Basso for £760,000 and nominal order was made against Mr Goodwin, with both parties appealing.

Judge Baker presided over the appeal hearing and his final remarks included the following:

"They have treated the illegality of the operation as a routine business risk with financial implications in the form of potential fines or, at worst, injunctive proceedings... The law, however is plain. Those who choose to run operations in disregard of planning enforcement requirements are at risk of having the gross receipts of their illegal businesses confiscated. This may greatly exceed their personal profits. In this respect they are in the same position as thieves, fraudsters and drug dealers."

The appeal was dismissed.

This case emphasises that confiscation procedures under the Proceeds of Crime Act 2002 can be an additional tool which is available to LPAs in appropriate cases, especially where offenders have deliberately chosen not to comply with the law.

If you have any queries about the content of this note or any other planning issues please contact us at our Appley Bridge offices on 01257 251177.