



Liar, liar, pants on fire

Deceit won't get you immunity from planning enforcement action

In the recent case of *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council* [2011] UKSC 15, the Supreme Court has held that a landowner was not entitled to a certificate of lawfulness of existing use or development (CLEUD) where he had intentionally deceived the council.

Having obtained planning permission for a hay barn, a landowner constructed a building that externally looked like a barn but which was internally fitted out as a residence. The landowner and his wife lived in the building for four years before applying for a CLEUD for use of the building as a house.

The landowner had always intended to use the building as a house, deliberately deceiving the council from the outset.

Section 171B(2) of the Town and Country Planning Act 1990 (TCPA 1990) states that where there has been a breach of planning control consisting of a change of use of any building to a single residence, no enforcement action can be taken after the end of four years. The CLEUD was granted and upheld by the Court of Appeal.

The Supreme Court held that the development had not acquired immunity from planning enforcement action as:

- The building which looked like a barn was not constructed as a barn, but as a house, so there was no change of use within section 171B(2) of the TCPA 1990.
- Even if there were a change of use, as a matter of public policy the landowner's dishonest conduct meant he could not rely on section 171B(2).

As the court had decided that there was no change of use, it was not strictly necessary to address the public policy issue. However, the court felt it was an issue of general importance.

The government intends to increase local authorities' powers to tackle unauthorised development, and the proposed Localism Bill 2010-11 seeks to address the problem of concealment, whether deliberate or not. This decision will be welcomed by local authorities dealing with suspected dishonesty in applications for CLEUDs.

Should you require any further information concerning this or any other Property matters, please contact **Stephen Tetlow** on **020 8508 2111** or by email **stephen.tetlow@attwaters.co.uk**

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Profile

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Admitted as a solicitor in 1983, Stephen spent the early part of his career practising in the West End of London. He joined Attwaters in 1994, becoming a partner in 1996. Stephen is a highly experienced property professional and deals with all aspects of conveyancing, predominantly commercial. He is based in the Loughton office.

Advising on matters related to commercial property sale, purchase, mortgage and leasing, sale and purchase of freehold and leasehold residential property, mortgages including remortgages and home equity release. At a time when many firms are opting for a conveyor belt approach to this work, Stephen remains committed to providing the extra value and assurance that a personal approach brings.



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