

## The Myths of Enforcement Immunity



Planning Enforcement on land or property can seem like a daunting and intimidating process. The consequences of rectifying a breach in planning control can be expensive and time consuming. This is becoming more prevalent when some recent Appeal and High Court decisions have prosecuted under the Proceeds of Crime Act (2002).

However there are provisions within the Planning Act (S.171.B) to rectify a breach; making a use or building operation immune from enforcement action.

There are certain myths that many people misconstrued; particularly relating to residential development and/or a change of use in the countryside. The provisions of the 1990 Planning Act provides immunity on three grounds:

- 1) A building, engineering, mining or other operation, 4 years from substantial completion;
- 2) The change of use of any building to use as a single dwelling house, 4 years from the breach;
- 3) In the case of any other breach of planning control, 10 years from the breach.

In all situations a Certificate of Lawful Use must clearly show 'on the balance of probability' (i.e. more than 50%) that the use, development or operation has been continuous over the relevant period.

**'THE 4 YEAR RULE'** applies to building, engineering or other works which have taken place without the benefit of planning permission, and that have remained unchallenged by enforcement action for 4 years or more. In this context one has undertaken operational development or physical works.

**'THE 10 YEAR RULE'** applies to a Change of Use to land and buildings which must have existed in excess of 10 years before it can be protected from enforcement action. Therefore you may have a perfectly adequate building but no lawful use for it.

The ten-year immunity rule applies to most breaches of planning conditions where a decision has been granted by a Council, although confusingly a breach of condition relating to the use as a single dwelling house is tested under the 4 year rule.

As an example, if one were to place a caravan on a piece of land for residential purposes, and it was regarded to be a chattel (i.e. not fixed or regarded to be development) then the case would be tested as a change of use to the land under the 10 year rule. However if one was to undertake a building operation (i.e. built a house or have a non-movable structure) then this would be tested under the 4 year rule.

The complexities of gaining immunity are also regulated by 'concealment'. Immunity and lawfulness may not be granted when an applicant purposefully hides the use, building or operation with a pure intention to evade enforcement. Therefore you cannot build a house in a barn, cover it with straw bales and then expose it after the relevant period. You will not be surprised if your Local Authority may take action!!



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