

## Planning Briefing Note

### Have you got away with it for long enough?

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It will probably come as a surprise to most people to learn that carrying out any form of development (such as putting up a new building or changing the use of an existing building) without planning permission is not illegal. Development carried out without the necessary planning permission is a “breach of planning control”, which means that the development is not lawful, but that is technically different from being illegal. Very broadly, the principal difference is that an act which is not lawful can (in certain defined circumstances) be made lawful after the event, whereas an illegal act cannot.

This technical difference is no more perfectly illustrated than in planning law.

If, for example, a person builds a house without planning permission, and no ‘enforcement action’ is taken by the local planning authority during the period of 4 years from when that house was ‘substantially completed’, then the breach of planning control (i.e. the building of a house without planning permission) is immune from being enforced. In that case, the local planning authority cannot compel its removal and the owner will be able to apply for what’s known as a “Certificate of Lawful Use or Development”. In this example, as long as the applicant can provide evidence that the house was substantially completed more than 4 years before the date of the application, then he/she will be entitled to the grant of the certificate. Once a certificate is issued, any potential buyer of the house should be satisfied that it’s safe from enforcement under the relevant Planning Act, albeit that there are bound to be building regulation issues that will need to be investigated.

The Planning Act (the Town and Country Planning Act 1990) sets out two time limits when breaches of planning control are immune from enforcement. Those two time limits are 4 years (the 4 year rule) and 10 years (not surprisingly, the 10 year rule), and which of those time limits is relevant will depend on the type of development carried out.

Generally speaking, any change of use of a building without planning permission will be subject to the 10 year rule (i.e. it will only be immune from enforcement once a period of 10 years has elapsed from when the change of use occurred). However, any change of use of a building to a single residential dwelling (with no element of a mixed use of, say, residential + commercial) will be subject to the 4 year rule.

Just a couple of cautionary notes:

1) if during the period that you are waiting for the breach of planning control to become immune, the local planning authority becomes aware of that breach and takes enforcement action by, for example, issuing an enforcement notice, then the immunity clock stops. You can appeal against an enforcement notice, and there are strict time limits for when that appeal must be made. Failure to comply with an enforcement notice, when it has taken effect, is an offence.

2) if you have a listed building, you may well be immune from enforcement under the Planning Act for, say, putting up an extension without planning permission, but listed buildings are also protected via a separate Act, which says that it is an offence to carry out works to a listed building without listed building consent (which is separate from planning permission under the Planning Act). If the local planning authority carries out a successful prosecution for that offence, the defendant can expect a heavy fine. There are no immunity provisions for works carried out to a listed building without listed building consent.

If you have any queries please contact Tom McPhie at

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