The perils of ignoring planning

Planning enforcement notices can be issued whenever there has been a breach of planning control. That could involve use that is not permitted in planning terms, a failure to comply with any conditions attached to the grant of planning permission or the undertaking of development without consent or not in accordance with the consent granted.

Under the Town & Country Planning Act 1990 (the **Act**) the power to take enforcement action for undertaking building work (other than demolition work) is lost after the end of the period of four years beginning with the date on which the operations were substantially completed. The question of the what this time limit means was considered by the Court of Appeal in *Devine v Secretary of State for Levelling Up, Housing and Communities*.

The facts

Mr Devine purchased a site which included a barn. Over a number of years he undertook various works without the grant of permission all of which had the effect of creating a significant residential dwelling. In March 2019 an enforcement notice was served, based on the works to convert the barn. Mr Devine sought to challenge the notice but his appeal was rejected by the Planning Inspector. This led Mr Devine to seek a determination from the Court. By the time the case reached the Court of Appeal the one question for consideration was whether the right to take action had been lost at the time when the enforcement notice was served.

There was no dispute that the works undertaken were extensive. However his contention was that by March 2015 (4 years prior to the service of the enforcement notice) the work was substantially complete. He did not contend (nor did he have to) that the work was complete in its entirety. Rather, that what work was left to be undertaken beyond March 2015 consisted of minor reconstruction work or repair.

The planning inspector's findings

The Planning Inspector found, as a matter of fact, that by the Relevant Date (March 2015):

- The work was not substantially complete.
- Outstanding work at this point included the installation of heating and sanitation, doors, windows and the completion of a significant amount of roofwork, all of which were integral to the residential use of the building.
- The effect of the works was to create a new building – it could not be considered a barn.
- The suggestion by Mr Devine that the works were a series of unconnected and unrelated works of repair or improvement was not accepted.
- The outstanding work at March 2015 could not fairly be considered repair and did constitute development within the meaning of the Act.

Against this background the Planning Inspector concluded that the enforcement notice was valid. Importantly, these findings of fact were not challenged in the Court proceedings that followed.

The appeal

Mr Devine's appeal centred on how the state and condition of the building at March 2015 was assessed. As to this, it was first stated that the fact Mr Devine wanted to undertake further work after March 2015 was not relevant. Secondly, it was said the Planning Inspector should not have assessed whether the building was substantially complete with regard to its intended use as a dwelling as the enforcement notice referred not to a dwelling but the more general term 'building'.

Perhaps unsurprisingly these arguments were rejected by the Court of Appeal which determined that the Planning Inspector was entitled to conclude that the building was unmistakably a dwelling house which was not substantially complete given the outstanding work at March 2015. The intention of Mr Devine to use it for that purpose was not relevant as it was plain and obvious on the face of it that the building, once completed, would be residential as opposed to agricultural. Mr Devine's intentions merely reinforced that conclusion (to the extent that was needed). The nature of the outstanding work made it plain and obvious that the building was not substantially complete by March 2015.

The impact of upholding the enforcement notice was that the new building has to be removed. In ratifying that outcome the Court of Appeal stated that this outcome was not unfair given Mr Devine (who was a builder by trade) knew that he needed planning consent yet made a conscious decision to undertake unauthorised works over an extended period of time.

Concluding thoughts

The test of whether works are substantially complete has not been changed by this decision but it does serve as a useful reminder of the importance of understanding both the requirements under the Act before undertaking development work as well as the potential consequences of failing to adhere to the same.

How we can help

If you are a developer and require advice and assistance in relation to planning matters please contact our dedicated planning team who would be delighted to see how we might assist.

Cripps

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