

## The 4-year rule

The press have recently picked up on a case in Mole Valley District in Surrey, where the Council has granted a lawful development certificate for a dwelling 'hidden' in woodland in the district. It seems that the neighbours and some local councillors are not happy about this.

As in all cases of this type, the dwelling became immune from enforcement and therefore lawful because it had been continuously occupied as a dwelling for four years. The rule is quite straightforward. If a building is equipped with the essential facilities required for day-to-day domestic existence, so that it can genuinely be described as a dwelling, and it is continuously used as a dwelling for at least four years, then its occupants are entitled to apply for a Lawful Development Certificate. The dwelling would be lawful even without the certificate if the qualifications have been met; the certificate simply confirms the existing position.

There are two exceptions to this rule. The first is what is known as the *Connor* doctrine, and was well illustrated by the decision of the Supreme Court in *Welwyn Hatfield v. SSCLG*. In that case, Mr Beesley had deliberately set out to deceive the local planning authority by obtaining planning permission for an agricultural building, intending all along to erect a house. He purported to implement the planning permission, and what he built looked outwardly similar to the agricultural building for which planning permission had been granted, but it was designed and equipped as a house. Mr Beesley and his family then occupied the house for four years, following which an application was then made for a lawful development certificate. This was refused by the local planning authority on the grounds of Mr Beesley's fraudulent conduct, but granted by an Inspector on appeal. A challenge to that decision by the Council in the High Court succeeded, but the Court of Appeal reversed this decision. However, the Supreme Court finally sided with the Council, deciding that Mr Beesley's deliberate deceit prevented him from benefiting from his wrongdoing.

The Supreme Court nevertheless made it clear that it was only Mr Beesley's deliberate deception in making a fraudulent planning application which had disqualified him from claiming immunity from enforcement under the 4-year rule. It is clear from the judgment that conduct falling short of deliberate deceit does not prevent the operation of the 4-year rule. So actions (or inaction) falling short of deliberate deception - for example, simply keeping a low profile, involving possibly refraining from registering on the register of electors, not registering for council tax, not obtaining a TV licence, etc. - do not prevent immunity from enforcement being claimed under the 4-year rule.

The second exception to the 4-year rule relates to "deliberately concealed development". New rules introduced by the Localism Act which are due to be brought into force shortly (probably next month) will enable a local planning authority who become aware of development which has been deliberately concealed (which is not the same thing as development which has simply gone unnoticed) to apply to the magistrates' court for a 'planning enforcement order'. They must do so within six months of the date when they first became aware of the development, but their word as to when that was has to be accepted at face value and cannot be questioned.

Before they can make an order, the magistrates must be satisfied (on the balance of probability) that the development had indeed been deliberately concealed, and they must also

decide that it is just in all the circumstances to make the order. If the order is granted, it gives the Council a year in which to serve an enforcement notice, even if this would otherwise have been out of time under the 4-year rule.

How much use will be made of the new procedure remains to be seen. My guess is that such cases are going to be fairly rare. The concealment of the development must be deliberate. So the local authority would have to produce evidence of a deliberate intention on the part of the developer to conceal the development; the fact that the development was in practice concealed may not be enough to demonstrate deliberate intent. It is doubtful whether simply living quietly and not drawing attention to one's residential occupation of the property would be enough to amount to deliberate concealment.

Further speculation on this issue is unlikely to be very enlightening, and we are going to have to wait for the first cases to go through the courts before it becomes clear what effect the new provisions are likely to have in practice.

Meanwhile, the 4-year rule is alive and well, and I have no fewer than three live cases in progress at the moment.

## **About Me**

### Martin H Goodall LARTPI

I am a Solicitor (admitted in 1977) who has specialised in planning law for more than 30 years. I am a member of the Law Society's Planning Panel and a Legal Associate of the Royal Town Planning Institute. I practise as a Consultant Lawyer with KEYSTONE LAW, having joined this dynamic and rapidly growing firm in 2009.