

## Is Breach of Planning Law A Crime

We have all become familiar with the rapid increase in financial crime this century, and in particular how easy it seems to be to use technology to steal large amounts of money in seconds. Cyber criminals and money launderers are among those Parliament was targeting when it passed the Proceeds of Crime Act in 2002 allowing courts to take illegal gains from convicted fraudsters.

What has not been quite so obvious however is that the use Planning Authorities can make of this particular law.

If Planning Law is breached for example a house is converted into flats without Planning Consent surely this is not a criminal offence and the Local Authority will issue an enforcement notice requiring the status quo to be reinstated and a fine can be imposed. Yes and no.

The local authority can do all of that but if an individual in breach then fails to abide by a Planning Enforcement Notice this is automatically a criminal offence which means that the gains made by the individual because of the planning breach can be confiscated by an order under the Proceeds of Crime Act.

In the case of house converted into flats without planning consent the resulting rent can be confiscated. Brent and Harrow confiscated £1.4 million this way in a 2012 case.

If an outhouse is used as rental property without permission (as happened in Ealing 2013 in the "Beds in Sheds" Case) then again the rent can be confiscated.

Where permitted parking use was restricted to parking on match days and somehow morphed into full blown Park and Ride facilities for a major airport as happened in 2010 in near Bishops Cleeve then the resulting gains (here £760,000) were confiscated.

Creating a car park in a Green Belt cost the developer £33,000 in South Buckinghamshire in January 2013 and using Green Belt commercial purposes resulted in a Confiscation Order in favour of Runnymede Council.

The sale of cars from a home address was the subject of a case in Bexley, where the Local Authority confiscated £3,000.

More recently last year a house owner who wished to create additional light and open up a view over the Poole coastline butchered an oak tree which was the subject of a Tree Preservation Order. He had to pay a Confiscation Order to Poole District Council in the sum of £21,750, representing the increase in value of his house because of the view

Needless to say the Proceeds of Crime Confiscation Orders are potentially many times more than any enforcement fine could be expected to be.

There was one case last year where the Local Authority did not fare so well. They had been about to allow a retrospective application for Planning Consent which would have remedied a technical breach however they effectively changed their mind about consenting and were criticised by the Court for allowing the prospect of a Proceeds of Crime application to influence their decision. The court therefore only allowed them a minimal Confiscation Order for technical reasons.

The lesson of a steady stream of cases over the last fifteen to twenty years however is that this is a very real risk for those developing property and could affect any branch of planning legislation including Enforcement Orders for alterations to Listed Buildings or any other planning breach.

If in any doubt about whether your development will infringe planning laws consult your Local Authority or ask a solicitor. if you need us to help with planning queries please contact Alison Fielden or Philp Stephens on 01285 653261 or [alison@alisonfielden.co.uk](mailto:alison@alisonfielden.co.uk) and [philip@alisonfielden.co.uk](mailto:philip@alisonfielden.co.uk)