



6 April 2011

PRESS SUMMARY

Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant) [2011] UKSC 15

On appeal from the Court of Appeal (Civil Division) [2010] EWCA Civ 26

JUSTICES: Lord Phillips (President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Mance, Lord Clarke

BACKGROUND TO THE APPEAL

This appeal concerns the application of planning law to a dwelling house disguised as a hay barn. The first issue is whether the building is within the provisions of the Town and Country Planning Act 1990 which impose a time limit for taking enforcement action against breaches of planning control. The second issue is whether the owner's dishonest scheme disentitles him from benefitting from those provisions.

In 2001 Mr Beesley, the Second Respondent, applied for and obtained planning permission to construct a hay barn for grazing and haymaking on open land which he owned in the Green Belt. In 2002 he constructed a building which was to all external appearances the permitted barn, but internally was a fully fitted-out dwelling house with garage, living room, study, bedrooms, bathrooms and gym. In August 2002 he moved in with his wife and lived there continuously for four years. Welwyn Hatfield Borough Council, the Appellant, in whose area the property lies, remained unaware that the building was constructed as, or was being used as, a dwelling house.

In August 2006 Mr Beesley made an application for a certificate of lawfulness for use of the building as a dwelling house. He contended that the four year time limit for taking enforcement action in section 171B(2) of the Town and Country Planning Act 1990 ("the 1990 Act") was applicable and had elapsed. The section provides that "*where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach*". The certificate was granted and subsequently upheld by the Court of Appeal, which decided that there had been a "change of use" within section 171B(2) such that immunity from enforcement was established.

The Council appealed to the Supreme Court on two grounds. First, it challenged the Court of Appeal's decision that there had been a relevant change of use. Secondly, it argued that even if there had been such a change, the principle of public policy that no one should be allowed to profit from his own wrong precluded Mr Beesley from relying on section 171B(2).

JUDGMENT

The Supreme Court unanimously allows the appeal. It holds that: (i) there had been no change of use within section 171B(2); (ii) in any event, Mr Beesley's dishonest conduct meant that he could not rely on the section. Lord Mance gives the lead judgment. Lords Rodger and Brown deliver additional concurring judgments.

REASONS FOR THE JUDGMENT

On the first issue, the question was whether there had been any relevant change of use such as to bring the building within section 171B(2). The Supreme Court held first that the building which Mr Beesley constructed was not the permitted barn: it was a dwelling house. Therefore there could not have been a change of use within section 171B(2) from the use permitted by the planning permission. In any event, it was doubtful whether change of use under section 171B(2) could consist of a simple departure from permitted use. The word “use” in the section is directed to real or material use, not permitted use. [13]-[14]

Nor was there a relevant change of use on the basis that in the short period between completion of the building in July 2002 and its residential occupation on 9 August 2002 the building had no use, such that there was a change of use from no use to use as a dwelling house on and after 9 August. It is artificial to say that a building has no use when its owner has just built it to live in and is about to move in a few days’ time. The question of whether it is right to describe a building as having no use is not one which can sensibly be answered on a day by day basis, but rather calls for a broader and longer term view. For all these reasons, section 171B(2) is simply not apt to encompass the use of a newly built house as a dwelling house. [27]-[30]; [68]

In light of this conclusion on the first issue, it was not strictly necessary to address the second issue, but given its importance the Court went on to do so. The issue involved consideration of the scope and application of the principle that, unless the contrary intention appears, statutes are to be construed to the effect that no one should be allowed to profit from his own wrong. The Court noted that Mr Beesley intended to deceive the Council from the outset by his statements in the planning application. This was positive deception in matters integral to the planning process and directly intended to undermine that process. His conduct was not identifiably criminal but the principle is not only relevant where there has been the commission of a crime. The Court further considered the rationale of the statutory provision: the four year period in section 171B(2) must have been conceived as a period during which a planning authority would normally be expected to discover an unlawful use and after which the general interest in proper planning control should yield and the status quo prevail. Positive and deliberately misleading false statements by an owner which prevent discovery take a case outside that rationale. It would in fact frustrate the policy of the section if the time limit for enforcement was to apply on the facts of the present case. It would also damage the public’s confidence in planning law: any law-abiding citizen would be astonished to suppose that Mr Beesley’s dishonest scheme, once being discovered, would not be enforced against but rather crowned with success. It is unthinkable that Parliament intended such an outcome. Even if, therefore, Mr Beesley had come within the literal wording of section 171B(2), his conduct took him outside its scope. [31]; [53]-[58]; [67]; [80]

References in square brackets are to paragraph numbers in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html