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How we did it: Clamping down on breaches of control

2 April 2015 by Jonathan Tilley , Be the First to Comment

A west London authority has won a confiscation order over unauthorised use of a property as flats. Jonathan Tilley reports.



The enforcers: London Borough of Brent senior prosecutions advocate Tola Robson and planning enforcement manager Tim Rolt (pic. Julian Dodd)

The [Get the Planning iPad edition ▼](#) has issued a number of confiscation orders for planning breaches under the Proceeds of Crime Act (POCA) 2002. A case concluded recently involved a property at 219 Church Road, Willesden, that had been converted

Key lessons

- It is important that all teams involved within the council work together and draw on

into a shop and nine flats without permission.

The site's authorised use was stated as being "for retail and one flat". Borough planning enforcement manager Tim Rolt says complaints from neighbours started to be received back in 2003. When planning staff inspected the premises, they found "awful" conditions, affecting neighbours and causing clear planning harm.

An enforcement notice was served on Tusculum Investments NV, the registered proprietor of the land, in October 2007. Hussan Hussain, a director and part owner of the company, had purchased the property as an individual. However, Tusculum continued to receive rents, either from the tenants or in the form of housing benefit, and instructed and paid agents to carry out the collections.

Planning officers visited the property a number of times between September 2009 and August 2011, at which point proceedings were started against Hussain. He was sentenced in June 2013. He appealed, arguing that the rents went to Tusculum and he received no benefit, but his appeal was dismissed last November. A confiscation order was made for £494,314.

The rental income received in this period was calculated with reference to the housing benefit that the respondent had paid out to the tenants. Alpa Shah, a financial investigator working for the borough, says that the legislation on calculating the amount is "quite draconian". Calculations have to be cross-referenced with bank accounts to show receipt of income from the unauthorised use, Shah explains. The process takes time, she adds. The investigators were involved early on, working closely with the borough and its legal team and holding regular meetings.

The borough uses POCA on a regular basis. Rolt claims that in the last financial year it made more POCA prosecutions, including more planning cases, than any other council. The majority of these involved multiple flat conversions such as the Church Road property, he says. The money raised from fines is used to fund further enforcement activity, including employing an additional enforcement officer.

Bre... [Get the Planning iPad edition](#) ... a Robson says most prosecutions are made against rogue landlords who have been given warnings over a number of years, as in the Church Road case. "It is quite capital-intensive, and we look at the public interest argument," she explains.

each other's expertise.

Enforcement officers, financial investigators and council solicitors at Brent work together from the early stages of POCA cases and have regular meetings throughout, using the expertise of experienced barristers.

- **Councils can pursue all those involved in an infringement when going through the confiscation order process.** If estate agents are involved in letting out flats, they can be pursued as well as the landlord. Councils can also check whether there are other enforcement notices on properties owned by the same person and pursue them all to maximise the confiscation amount.
- **It is important to be aware of delaying tactics, because many owners will try to drag out the legal process.** In the Church Road case, the owner repeatedly attempted to make excuses for delaying court hearings and was receiving money from the flats throughout the time that the case was in court.

Robson says that by taking a lead in using POCA for planning cases, rather than following other authorities, the borough has had to learn the ropes as it goes along, using the expertise of experienced planning barristers. The borough always uses expert barristers, it explains; Edmund Robb of Prospect Law was involved in the Church Road proceedings.

Robson says one lesson learned has been the need to be aware of the scope for delaying tactics. In the Church Road case, the owner called for adjournments on a number of occasions for different reasons, meaning that the borough had to be firm and threaten legal action if hearings were not attended. "At every hearing there was a reason for delay and we had to be wise to that," Robson says. "It can be a long process, but don't give up. Remember you're doing it for the public."

Another issue in the case was an argument raised around whether tenants had passed on housing benefit and the rents had been collected. Rolt says that time had to be taken to trace former tenants and get statements from them.

Rolt advises that the role of agents can be considered in POCA prosecutions. At Church Road, various estate agents were in control of letting the flats and he believes that they too could have been prosecuted. Hussain's appeal raised the question of whether the landlord or the agents were receiving the money.

The infringement continued throughout the period that the case was in court, and the owner was receiving rents until relatively recently. But when planning officers visited the property recently, they found that it had been reconverted. "The case went on for so long and was only resolved as a result of the POCA action," says Rolt.

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