

# HEWITSONS

## THE LOCALISM BILL



The Localism Bill provides for extended time limits for enforcing 'deliberately concealed' breaches of planning control.

At present, unauthorised development becomes immune from enforcement action after 4 years in the case of operational development and change of use to a dwelling house and 10 years in all other cases.

The Localism Bill proposes to add a new Section 171BA in the Town and Country Planning Act 1990 which will introduce a procedure whereby the Local Planning Authority can apply to the magistrates' court for a 'planning enforcement order'. Such an order will give the local planning authority a year within which they can take enforcement action even if the 4 year or 10 year period has expired.

The Bill as originally drafted would have allowed the magistrates' court to make a planning enforcement order for all breaches that had simply been 'concealed' from the planning authority. Concealment was widely defined to include representations made by the person, as well as inaction on the person's part. However, the House of Lords have requested an amendment so that the magistrates' court may only make a planning enforcement order if they are satisfied, on the balance of probabilities, that the breach has been 'deliberately concealed'. In their debates, the Lordships intended that the amended provisions 'should be aimed only at the worst cases of concealment' and referred to the Welwyn and Hatfield case of a house within a barn recently decided by the Supreme Court.

These proposals have been heavily criticised, not least by the Law Society who feel that they are likely to give rise to additional expense and delay in property transactions. It is certainly true that, at present, owners and purchasers of land, and their

investors, rely on the time limits for enforcement and the certainty that the expiry of those limits can provide. This certainty will be undermined by these proposed changes. It is also likely that the issue of what amounts to 'deliberate concealment' will itself be the subject of legal wrangling in the future.



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