



**Knowledge Exchange Seminar Series (KESS)**

*...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland*



## Progress in planning: regression in enforcement?

**Stephen Mc Kay**  
**Director of Planning Education**  
**School of Planning, Architecture and**  
**Civil Engineering**  
**Queen's University, Belfast**

## Planning practice and the purpose of the enforcement system

- Remedy the effects of unauthorised and undesirable development
- Take legal action against those who flout planning legislation
- *Traditionally labelled the Cinderella of the Planning System*





Knowledge Exchange Seminar Series (KESS)

## Definition of development

### Two strands:

- operational development**
- material change of use**



Knowledge Exchange Seminar Series (KESS)

## Key Contextual Matters

- The Town and Country Planning Act 1947:
- Discretion
- The 4 year rule...**one exception**
- The enforcement notice
- The Magistrates Court
- 1947-90...**recognition of the need to differentiate in the definition of development**



Knowledge Exchange Seminar Series (KESS)

# Issue 1: the Magistrates Court



Knowledge Exchange Seminar Series (KESS)

# Case 1

2010 – Demolition of B1 listed building at Piney Ridge on Belfast's Malone Road



Knowledge Exchange Seminar Series (KESS)

## Piney Ridge



Knowledge Exchange Seminar Series (KESS)

## The outcome

- Following a successful prosecution, the Magistrates' Court fined the offender £150 whilst the company of which he is director was fined £200.
- The Department did not include a condition to reinstate the building in the listed building enforcement notice.



Knowledge Exchange Seminar Series (KESS)

## Case 2

- Harrymount House, Waringstown - listed dwelling was unlawfully demolished following the start of approved works to renovate the building.
- Successfully prosecuted and the overall total fine imposed by the court was £50000.



Knowledge Exchange Seminar Series (KESS)

## The outcome

- ...the highest ever issued in the jurisdiction and seen as a major breakthrough in terms of the planning prosecution being supported by the courts.
- **On appeal, however, the £15000 fine imposed on each of the two owners was reduced to £500 and the contractor's £20000 fine was reduced to £100.**



Knowledge Exchange Seminar Series (KESS)

## Does the problem prevail elsewhere?

- The literature suggests that it is perceived as a problem throughout GB, particularly in the context of built heritage.



Knowledge Exchange Seminar Series (KESS)

## What about in the south?

- A snapshot suggests that similar issues prevail...Dublin, Cork and Limerick
- whilst in Leitrim the quote was....
- “we’ve almost given up on prosecuting as the courts either let those who flagrantly flout the law off the hook or fail to impose a significant deterrent”



Knowledge Exchange Seminar Series (KESS)

## A paradigm shift since mid -2012?



Knowledge Exchange Seminar Series (KESS)

## Case 3

- **March 2012**
- **£30,000 at Armagh Magistrates' Court for non-compliance with two Enforcement Notices.**
- **Unauthorised operational development (shop, diner, storage buildings) and unauthorised change of use of lands to vehicle sales.**



Knowledge Exchange Seminar Series (KESS)

## Case 4

- **6th June 2012**
- **A £20,000 fine imposed at Enniskillen Magistrates' Court for non compliance with a Planning Enforcement Notice which sought the demolition of an unauthorised dwelling in Lisbellaw.**



Knowledge Exchange Seminar Series (KESS)

## The rationale for change

- ...new sentencing guidance issued to the Magistrates Court
- However...



Knowledge Exchange Seminar Series (KESS)

## Continuation of perceived leniency?

- **May 21<sup>st</sup> 2012**
- **Listed building demolition**



Knowledge Exchange Seminar Series (KESS)

## Before



Knowledge Exchange Seminar Series (KESS)

## After



Knowledge Exchange Seminar Series (KESS)

## Outcome

**The offender pleaded guilty to the demolition of a Listed Building and was fined £5,000**



Knowledge Exchange Seminar Series (KESS)

- **Fines issued to major offenders still perceived to be a problem**
- **Early evidence suggests that generally the “Super Councils” are “putting enforcement on the back burner”**



Knowledge Exchange Seminar Series (KESS)

## February 2014

- **England – major development**
- **a specialised planning court has been created within the High Court and appeals may in certain circumstances be able to proceed directly to the Supreme Court**



Knowledge Exchange Seminar Series (KESS)

## Issue 2



Knowledge Exchange Seminar Series (KESS)

## Time limitation

- From **4 and 10** to **5 and 5**
- The sequence of events:
  - Response to Consultation for Reform (2009)
  - The Planning Bill (November 2010)
  - The Planning Act 2011
  - Commencement of Section 132 (almost immediate)



Knowledge Exchange Seminar Series (KESS)

## Section 132

- “....(1) where there has been a breach of control consisting in the carrying out without permission of building, engineering, mining or other operations...no enforcement action may be taken after the end of 5 years.....(3)in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years **beginning with the date of the breach**..”
- **So what?**



Knowledge Exchange Seminar Series (KESS)

## Recent developments

- The then DCLG 2002/2006 – 15 years
- Richard Humphreys QC in the JPL
  - “20 years of the 10 year rule – time for reform”
- .....not a reduction to a 5 year immunity period but a doubling to 20!
- ...associated issues



Knowledge Exchange Seminar Series (KESS)

# Concealment and time limitation

- Concealment of development has been a high profile issue in England



Knowledge Exchange Seminar Series (KESS)

# The Fidler Case



Knowledge Exchange Seminar Series (KESS)

## *An enforcement notice...may be issued...*

- *within the period of four years from the date of the breach.*
- Forbes stated...”in my view the inspector’s findings of fact make it abundantly clear that the erection of the straw bales was an integral – indeed essential part of the operation designed to deceive the LPA”



Knowledge Exchange Seminar Series (KESS)

## Important

- It was accepted **at that time** that concealment does not in itself provide a legitimate basis for the council to succeed, **as hiding something does not take away the lawful rights that accrue due to the passage of time...BUT** subsequently!



Knowledge Exchange Seminar Series (KESS)

# The Beesley Case



Knowledge Exchange Seminar Series (KESS)

## Change of use from a barn to a dwelling

- SoS CLG and another v Welwyn Hatfield Council
- Beesley's applied for a LDC
  - refused
  - allowed on appeal
  - reversed at High Court
  - High Court decision reversed on appeal
  - Supreme Court set aside the LDC



Knowledge Exchange Seminar Series (KESS)

## Positive deception!

- The court 's opinion was that dismissing the case would damage confidence in the law
- “Parliament had not intended such an outcome...dishonesty must not be crowned with success” ...The Connor Principle
- ...hence Mr Fidler’s conduct was also subsequently deemed to be a case of deception



Knowledge Exchange Seminar Series (KESS)

## April 6<sup>th</sup> 2012

- The Localism Act 2011
- Local authorities are provided with a 6 month window in which to take action against “**concealed breaches of planning control**”



Knowledge Exchange Seminar Series (KESS)

## The provision

- The period commences from the date on which a breach is discovered “**regardless of whether that discovery was made after the usual immunity period**”...applied to mining back in 1947!



Knowledge Exchange Seminar Series (KESS)

## Going Forward

- We are moving into a new era of planning where policy making and decision taking must be seen to be beyond reproach.
- Questions still exist around the development and commencement of immunity legislation.
- If the legitimacy of the planning system is to be maintained perhaps issues like these need to be revisited and, where appropriate, remedies developed.



Knowledge Exchange Seminar Series (KESS)

## ...and as for Mr Fidler



Knowledge Exchange Seminar Series (KESS)

*Thank you*



Knowledge Exchange Seminar Series (KESS)



Northern Ireland  
Assembly



The Open  
University



## Knowledge Exchange Seminar Series (KESS)

*...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland*